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In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.

Vol 1911

FRANCISCO BUILDING CORP., LTD., a corporation,  
Appellant,

vs.

LEIGH M. BATTSON, as trustee, and H. H. COTTON, CHARLES C. IRWIN, JOHN TREANOR and J. B. VAN NUYS, as the Medical Center Building First Mortgage Bondholders Protective Committee,  
Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

FILED

NOV 20 1935

PAUL P. O'BRIEN,  
CLERK



In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Solicitors.

For Appellant:

ELBERT E. HENSLEY, Esq.,  
JOHN H. KLENKE, Esq.,  
Insurance Exchange Building,  
Los Angeles, California.

For Appellees Leigh M. Battson, as Trustee and H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys, as the Medical Center Building First Mortgage Bond Holders Committee:

O'MELVENY, TULLER & MYERS, Esqs.,  
HOMER I. MITCHELL, Esq.,  
Title Insurance Building,  
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF CALI-  
FORNIA CENTRAL DIVISION

|                          |   |             |
|--------------------------|---|-------------|
| IN THE MATTER OF         | ) | No. 25552-J |
| FRANCISCO BUILDING CORP. | ) |             |
| LTD., a corporation,     | ) | PETITIONERS |
|                          | ) | CITATION    |
| Debtor.                  | ) | ON          |
|                          | ) | APPEAL      |

BY THE HON Paul J. McCormick ONE OF  
THE JUDGES OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA, CENTRAL DIVI-  
SION: TO LEIGH M. BATSON, as Trustee,  
H. H. Cotton, Charles C. Irwin, John Treanor and  
J. B. Van Nuys, as the Medical Center Building  
First Mortgage Bondholders' Protective Committee,  
Appellees, Greeting:

YOU ARE HEREBY cited and admonished to be  
and appear before a United States Circuit Court of Ap-  
peals, in the Ninth Circuit, to be holden at the United  
States Federal Building, in the City and County of San  
Francisco, State of California, in the District and Circuit  
above-named, on the 26th day of September, 1935, pur-  
suant to an appeal filed in the Clerk's office of the District  
Court of the United States, for the Southern District of  
California, Central Division, wherein Francisco Building



Cor. Ltd., a corporation, is debtor-appellant and *Lee M. Babson*, as Trustee, H. H. Cotton, Charles C. Irwin, John Treanor and J. B. Van Nuys are appellees, to show cause, if any there be, why the order in said appeal mentioned should not be reversed, and why speedy justice should not be done to the parties in that behalf.

GIVEN UNDER MY HAND in the City of Los Angeles, County of Los Angeles, State of California, in the District and Circuit above named this 26th day of August, A. D. 1935.

Paul J. McCormick

United States Judge for the Southern District of California, Central Division, in the Ninth Circuit.

[Endorsed]: Received copy of the within document Aug 26, 1935. O'Melveny, Tuller & Myers By M. A. T. Filed R. S. Zimmerman, Clerk at 14 min past 3 o'clock Aug. 27, 1935 P M. By Theodore Hocke, Deputy Clerk.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

To LEIGH M. BATTSON, as Trustee, and H. H. COTTON, CHARLES C. IRWIN, JOHN TRAINOR and J. B. Van Nuys, as the Medical Center Building First Mortgage Bond Holders Committee, and to Messrs. O'Melveny, Tuller & Myers, and Homer I. Mitchell, Their Attorneys, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein FRANCISCO BUILDING CORP., LTD., a Corporation, is appellant, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANCIS A. GARRECHT, United States Circuit Judge for the Ninth Judicial Circuit, this 26th day of August, A. D. 1935.

Francis A Garrecht  
United States Circuit Judge.

UNITED STATES OF AMERICA, ss:

On this 27th day of August, in the year of our Lord one thousand nine hundred and 35, personally appeared before me, Jos. H. Camplin, the subscriber, and makes oath that he delivered a true copy of the within citation to Leigh M. Battson as Trustee, and H. H. Cotton, Charles C. Irwin, John Trainor, and J. B. Van Nuys, as the Medical Center Building First Mortgage Bond Holders Committee, and to Messrs. O'Melveny, Tuller & Myers and Homer I. Mitchell, their attorneys.

Jos H. Camplin

Subscribed and sworn to before me at Los Angeles, this 27th day of August, A. D. 1935.

[Seal]

H. J. Hutchings

My Commission Expires July 2, 1937

[Endorsed]: Filed R. S. Zimmerman, Clerk at 15 min past 3 o'clock Aug. 27, 1935 P. M. By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552J.

PETITION FOR REORGANIZATION UNDER  
SECTION 77 B OF THE BANKRUPTCY ACT.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES DISTRICT COURT, SOUTH-  
ERN DISTRICT OF CALIFORNIA, CENTRAL DI-  
VISION:

The Petition of the Francisco Building Corp., Ltd., a  
corporation, respectfully shows as follows:

I.

That at all of the times herein mentioned, the Fran-  
cisco Building Corp., Ltd., was, and still is, a corporation  
duly organized and existing under and by virtue of the  
laws of the State of California.

II.

That the said Francisco Building Corp., Ltd., hereinafter referred to as the Debtor, has, during the last six (6) months immediately prior to the filing of this petition, had its principal office and principal place of business and its principal assets in the City of Los Angeles, County of Los Angeles, State of California, within the said Southern District of California, Central Division. The address of said corporation is:

Medical Dental Building,  
Eighth & Francisco Streets,  
Los Angeles, California.

## III.

That the said Debtor is not a railroad, insurance or banking corporation, or a building and loan association, and is such a corporation as could become a bankrupt under the provisions of the Acts of Bankruptcy as amended, and is such a corporation as can apply and take advantage of the provisions of the Acts of Bankruptcy as amended, and particularly Section 77B thereof, approved on the 7th day of June, 1934.

## IV.

That the capital stock of the said Debtor is as follows:

Authorized capital stock—500,000 shares, common at \$10.00 par value. Issued capital stock—26,150 shares. That it has assets as hereinafter described reasonably worth in excess of \$600,000.00. That it has liabilities as hereinafter described in excess of \$525,000.00. That it is engaged in the business of owning, operating and managing the Medical Center Building.

## V.

That the said corporation is the owner of the fee of that certain building commonly known as the Medical Center Building situated at the North East corners of 8th and Francisco Streets, in the City of Los Angeles, County of Los Angeles, State of California. That said building is a thirteen (13) story reinforced concrete, fireproof office building with a frontage of one hundred feet (100') on Francisco Street and sixty feet (60') on 8th Street. That said building was erected in 1927 and contains approximately 48,000 square feet of office space on the upper floors and three stores on the ground floor.

## VI.

That the assets of said Debtor consist of the following:

A lot of land approximately 100 ft. by 60 ft. on the N. E. corner of 8th and Francisco Streets, Los Angeles;

A thirteen-story reinforced concrete, fireproof construction office and store building erected thereon;

All equipment, fittings and fixtures therein;

All rents, issues, income and profit therefrom;

All appurtenances thereto;

All personal property situated therein, which is for the use or occupation of the said building generally, or pertains to the use of such building as an office and store building;

Accrued rents, accounts receivable, money received and held by the Trustee in possession and control.

Trustee's statement of operations attached hereto as Exhibit "A".

## VII.

That the petitioning Debtor as the owner of the fee in said land and building, owns and holds the same subject to a certain Trust Deed and Chattel Mortgage made and executed on or about the 1st day of December, 1924. That said Trust Deed and Chattel Mortgage is of record in the official records of the County Recorders Office of the County of Los Angeles, State of California. That the aforesaid Trust Deed and Chattel Mortgage secured \$615,-

000.00 in principal amount of 6% First Mortgage Gold Bonds. That there are now outstanding Bonds in the aggregate principal amount of \$524,500.00.

#### VIII.

That default was made with respect to the payment of interest due under said Bonds on or about the 1st day of June, 1932; that by reason of the aforesaid default, the substituted Trustee under the aforesaid Trust Deed and First Mortgage Bond issue, to-wit, Leigh M. Battson, did serve notice of acceleration upon the said Debtor, declaring all of said Bonds due and payable.

#### IX.

That by reason of the aforesaid default, the aforesaid Trustee did, on or about the 26th day of September, 1933, take charge of the aforesaid building, together with all of the personal property situated therein, together with all equipment, fittings and fixtures and since said date has been, and now is, collecting all of the rents, issues, income and proceeds thereof.

#### X.

That the date of the last payment of interest under the terms and provisions of the aforesaid 6% First Mortgage Gold Bonds, together with the Trust Deed and Chattel Mortgage securing the same, was on or about the 1st day of December, 1931. That by reason of the declaration of acceleration as aforesaid, and the unpaid interest, the sum of \$524,500.00 in principal is due, owing and unpaid, together with the sum of approximately \$90,000.00 in interest.

## XI.

That the Debtor is unable to meet its debts as they mature and desires to effect a plan of reorganization. That no prior proceeding is pending within the jurisdiction of this, or any other Court, with respect to the bankruptcy of said Debtor, or with respect to any plan or petition for reorganization under the provisions of the Bankruptcy Acts as amended, or in any receivership proceedings, or otherwise. That while the Debtor has been so unable to meet its debts as they mature, the aforesaid Leigh M. Battson has been collecting all of the rents, issues, profits and income from the aforesaid building.

## XII.

That the earnings and income from the properties of the Debtor and from its assets are, and have been, insufficient to pay the fixed charges of its obligations and operating expenses.

## XIII.

That because of the financial difficulties of the said Debtor, a Bond Holders Committee has been appointed consisting of

H. H. Cotton, 639 South Spring Street, Los Angeles  
Charles C. Irwin, Ambassador Hotel, Los Angeles  
John Treanor, 621 South Hope Street, Los Angeles  
J. B. Van Nuys, 400 Van Nuys Building, Los Angeles

That the aforesaid Committee is, and has been, commonly known as the Medical Center First Mortgage Bond Holders Committee, and was appointed for the purpose of attempting to work out a plan of reorganization to pro-



tect the interests and rights, if any, of the owners and holders of the said 6% First Mortgage Gold Bonds. That the aforesaid Committee was appointed and constituted under a bond holders deposit agreement dated May 18, 1932, and ever since said time have been, and now are, functioning as such bond holders' protective committee.

#### XIV.

The Debtor has been informed and believes and therefore alleges that the aforesaid bond holders' committee have requested the said Trustee to sell all of the said property pursuant to the terms of the Trust Deed and Chattel Mortgage securing the bonds now outstanding; that said sale has been ordered to be held in the immediate future; that it is unlikely that an adequate bid will be made at the said sale by any outside interest to protect and preserve the rights of the said bonds and of the Debtor and owner of the fee of said property.

#### XV.

The Debtor has been informed and believes and therefore alleges that a large number of outstanding bonds have not been deposited with the aforesaid Committee and that the owners and holders of such bonds will not participate in the reorganization proposed by said Committee and will receive only a fractional share of the value of said bonds. That the value of the aforesaid bonds on the market is only a fractional value of their true worth.

## XVI.

That no provision whatsoever is made under the proposed plan of reorganization of the aforesaid bond holders' committee to consider the rights, equities and interests of the owners of the aforesaid property, the petitioner herein and/or of the non-depositing owners and holders of bonds on the aforesaid property.

## XVII.

That in the event of the aforesaid sale of the said property the equities of the Debtor will be completely wiped out, to its irreparable harm, damage and detriment. That the Debtor proposes to reorganize under and by virtue of the provisions of 77A and B of the Acts of Bankruptcy and to effect a complete reorganization of the capital structure of the Debtor, together with the fixed charges and obligations against the aforesaid property and to propose a plan of reorganization just, fair and equitable to the interest of all concerned, to-wit:

(a) the owners and holders of bonds deposited under the aforesaid deposit agreement dated May 18, 1932;

(b) the owners and holders of bonds which have not been deposited under the aforesaid deposit agreement; and

(c) the owner and holder of the fee on the aforesaid property.

WHEREFORE, your petitioner, the Debtor herein, prays as follows:

1. That this Honorable Court order and direct that the Clerk thereof issue a subpoena to all interested persons, ordering and requiring such persons to appear within the time provided by law, at a hearing on the afore-

said petition, and that publication hereof, in a manner, form and time required by law.

2. That the Honorable Court make its Order approving the aforesaid petition as properly filed, and that this Honorable Court has jurisdiction thereof.

3. That this Honorable Court make its Order appointing a Trustee to take charge of the aforesaid property and to collect and hold all of the rents, issues, income and profits therefrom.

4. That this Honorable Court enjoin and restrain the commencement of any suits against the Debtor and enjoin and restrain the sale or attempted sale by any means, of the property, real, personal and mixed of the said Debtor, by reason of the terms and provisions of the aforesaid Trust Deed and Chattel Mortgage, or for any other reason.

5. That all necessary and proper proceedings be instituted and had under the provisions of section 77A and B of the Acts of Bankruptcy as amended in order to effect a reorganization of the Debtor and of its liabilities and fixed charges.

6. And for such other and further relief as may seem meet and proper, just and equitable under the premises in order to effect the intent and purposes of the said section 77A and B of the Acts of Bankruptcy.

FRANCISCO BUILDING CORP. LTD.

BY George Hess

Petitioner

Sec.

Elbert E. Hensley

Attorney for Petitioner

## EXHIBIT "A"

According to the statement of Leigh M. Battson, the Trustee, the following constitutes a statement of operations of the Medical Center Building upon an accrued basis between the period of September 26, 1933, to December 31, 1934:

## INCOME:

## Rentals:

|               |             |
|---------------|-------------|
| Stores        | \$11,275.00 |
| Offices       | 69,188.82   |
| Miscellaneous | 436.85      |

|              |  |             |
|--------------|--|-------------|
| TOTAL INCOME |  | \$80,900.67 |
|--------------|--|-------------|

## OPERATING EXPENSES:

|                            |           |
|----------------------------|-----------|
| Building service           | 16,059.94 |
| Heat, light, power & water | 10,544.23 |
| Maintenance, repairs       | 1,799.96  |
| General expense            | 8,443.99  |
| Trustees' fees             | 4,971.79  |
| Insurance                  | 3,211.64  |
| Bad debts                  | 7,000.00  |

|                         |  |             |
|-------------------------|--|-------------|
| TOTAL OPERATING EXPENSE |  | \$52,031.55 |
|-------------------------|--|-------------|

|   |           |
|---|-----------|
| <u>Operating profit</u> before providing for<br>taxes, bond issue charges and deprecia-<br>tion | 28,869.12 |
| Taxes   | 9,747.79  |
|   | <hr/>     |
| PROFIT, before providing for bond issue<br>charges and depreciation                             | 19,121.33 |

The said Trustee, Leigh M. Battson, also reports further statement of conditions as of December 31, 1934, as follows:

|  |             |
|--|-------------|
| Cash on hand (exclusive of special<br>account)   | \$28,957.31 |
| Owners special account   | 7,092.65    |
| represents certain funds de-<br>posited by owner prior to de-<br>fault on account bond issue<br>requirements |             |
| Net accounts receivable  | 6,097.49    |
| Prepaid insurance  | 1,182.35    |
| Current liabilities  |             |
| accrued operating expense<br>and sums due current trade<br>creditors   | \$1,866.91  |

State of California            )  
 County of Los Angeles ) ss.

George Hess, being by me first duly sworn, deposes and says: That he is the secretary of the petitioning Corporation herein named, and as such is authorized to verify this petition for and on its behalf in the foregoing and above entitled action; that he has read the foregoing PETITION FOR REORGANIZATION UNDER SEC. 77B of the BANKRUPTCY ACT and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

George Hess

Subscribed and sworn to before me this 17th day of April, 1935

[Seal]

Luella M Finck

Notary Public in and for said County and State.

My Commission Expires Feb. 6 1937

Samuel W. McNabb

[Endorsed]: Filed R. S. Zimmerman, Clerk at 58 min. past 1 o'clock Apr 19, 1935 P. M. By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER

No. 25552J.

This matter came on to be heard upon the verified petition of the above named debtor, said debtor appearing by its attorney, Elbert E. Hensley, Esq., and the Court being fully advised in the premises and being satisfied that the said petition complies with the Acts of Bankruptcy of the United States as amended and particularly with section 77A and 77B thereof as approved June 7th, 1934, and that said petition is filed in good faith, it is hereby

FOUND, ORDERED, ADJUDGED AND DECREED:

1. That the petition of the Francisco Building Corporation, Ltd., for reorganization is hereby approved and that the same is properly filed under the provisions of section 77A and 77B of the Acts of Bankruptcy, as amended;
2. That this procedure is necessary and proper in order to propose and effect a plan of reorganization of the said debtor and of its fixed charges and obligations, and of its assets;
3. That pending further proceedings herein and on this petition, all creditors, mortgagees, holders of trust deeds, trustees under trust deed or indentures, and all other persons, firms, associations or corporations, be and

they hereby are restrained and enjoined from instituting or prosecuting or continuing the prosecution of any action or suits at law or in equity, or under any statute against the debtor, or from levying any judgment, execution or process upon or against any of the properties of the said debtor now or hereafter located and situate in the County of Los Angeles, State of California, or from taking or attempting to take into their possession or under their control, the said property or any part thereof; and from attempting to make any sale of the property of the debtor, real, personal or mixed, by virtue of the power of sale contained in any mortgage, deed of trust, or otherwise, of or upon the said property of the debtor, or any part thereof; and from transferring and taking, cancelling, or otherwise disposing of any money, accounts receivable or other assets and property of the said debtor now in the hands of the Trustee or Trustees of trust deeds or indentures, creditors, mortgagees, holders of trust deeds, holders of bonds, depositories of bonds or bondholders' committee, or any other person or persons whomsoever.

4. That the debtor herein shall within 30 days from the date hereof, submit a proposed plan or reorganization to this Court and the creditors of the said debtor; that after such proposed plan of reorganization has been submitted to this Court, the debtor shall bring the same on for hearing before this Court upon notice thereof to be given to the Trustee and the Bond Holders Protective Committee referred to in the debtors petition and shall



cause a notice of said hearing, in due form, to be published at least once a week for 2 consecutive weeks in the Los Angeles Daily Journal which said paper is hereby designated a paper of general circulation for said purposes; that objecting creditors, if any there be, and all other persons objecting or excepting to the plan of reorganization as submitted by the debtor, shall file their written objections and exceptions thereto with the Clerk of this Court, serving a copy thereof upon the attorney for the debtor, at least five (5) days before the hearing on such plan.

Done in open Court this 20 day of April, 1935.

Wm. P. James

Judge of the said Court.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 40 min. past 9 o'clock Apr. 20, 1935 A. M. By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PROPOSED PLAN OF REORGANIZATION.

No. 25552-J.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES DISTRICT COURT, SOUTH-  
ERN DISTRICT OF CALIFORNIA, CENTRAL  
DIVISION:

OPENING STATEMENT

On or about April 20th, 1935, the petitioning debtor herein, Francisco Building Corporation, Ltd., a corporation, duly filed in the above entitled court a verified Petition for Reorganization under the provisions of Sections 77-A and B of the Acts of Bankruptcy as Amended.

Thereafter, and on the 20th day of April, 1935, the Honorable William P. James, Judge of the above entitled court, duly made his Order in writing, wherein and whereby the petitioning debtor herein shall within thirty (30) days from the date of said Order submit a proposed plan of reorganization to the above entitled court and to the creditors of said petitioner.

In submitting a plan of reorganization to the said court and to the creditors of this petitioner it has been and will be the aim of petitioner to amply provide for all existing creditors by affording them ample security for their claims, and, at the same time attempt to save and secure for petitioner the equity which it has in and to the real property in question which represents an investment by petitioner and its stockholders and the parties interested

herein in a sum in excess of Three Hundred Thousand Dollars (\$300,000.00).

Your petitioner believes that equity requires that not only the holders of the bonds hereinafter mentioned be protected as to their claims, but also that the amount represented by the investment of your petitioner should also be taken into consideration in any plan of reorganization proposed or adopted herein.

The principal asset of the petitioning debtor, as set forth in the petition on file herein, consists of the legal title to the land, building and fixtures located at the Northeast corner of Francisco and Eighth Streets, Los Angeles, California, formerly known as the Medical Center Building and now known as the Medico Dental Building.

Since on or about September 26th, 1933, the said building has been operated, managed and controlled by Leigh M. Battson, Esq. as the Trustee in possession, by reason of the default by petitioner under a certain deed of trust, hereinafter described and referred to.

Since September 26th, 1933, and up to and including December 31st, 1934, according to the statement of Mr. Battson, the following represents the income from the said building, together with the expenses of operation, management and maintenance thereof:

INCOME: From rentals and miscellaneous....\$80,900.67

OPERATING EXPENSES: Including building service, maintenance and repairs, heat, light, power and water, general expense and insurance, without reserve or depreciation or bad debts..... 40,059.76

|  |          |
|--|----------|
| TRUSTEES' FEES during said period..... | 4,971.79 |
| TAXES: during said period.....         | 9,747.75 |

It is therefore evident from the said statement of Mr. Battson that the profit made by said building during said period of time and before providing reserve for depreciation and bad debts was in the sum of \$26,121.33.

Your petitioner does not have figures available for the period of time subsequent to December 31st, 1934.

The said Leigh M. Battson has further stated that as of December 31st, 1934, he had on hand as Trustee the following assets:

|  |             |
|--|-------------|
| CASH ON HAND, Exclusive of Special Owner Account ..... | \$28,957.31 |
| CASH, Special Owner Account.....                       | 7,092.65    |
| TOTAL CASH ON HAND as of December 31st, 1934 .....     | 36,049.96   |
| ACCOUNTS RECEIVABLE—net .....                          | 6,097.49    |
| PREPAID INSURANCE .....                                | 1,182.35    |

The foregoing assets were subject to current liabilities of \$1,866.91.

Petitioning debtor does not have figures available showing the increase in the cash position of said trustee or further assets on hand subsequent to December 31st, 1934, but has been informed and believes, and therefore avers, that the cash position of the said trustee has been materially improved and increased since said date.

The operating profit of said building, as evidenced by the foregoing report and figures, as well as the cash position of the trustee is, such that a complete plan of reorganization equitable to all parties, if possible, should be entered into and approved.

## PLAN OF REORGANIZATION.

As a proposed Plan of Reorganization petitioning debtor hereby submits the following:

### ARTICLE I.

The debtor herein is to and shall retain title to the land and premises located at the Northeast corner of Francisco and Eighth Streets, Los Angeles, California, and formerly known as the Medical Center Building, now known as the Medico Dental Building; and that all of the authorized and issued common stock of the said Francisco Building Corporation, Ltd., a corporation, is to remain intact with the present owners and holders thereof.

### ARTICLE II.

That the First Trust Deed and Chattel Mortgage dated as of December 1st, 1924, executed and delivered by the Morgan Building Corporation to William K. Bowes, as Trustee, and recorded in Book 4817, Page 113 of the Official Records of the County Recorder's Office of Los Angeles County, California, securing \$615,000.00 in principal amount of Six Percent First Mortgage Gold Bonds executed by the said Morgan Building Corporation, be terminated and satisfied under Order of Court; and that

all of the issued, outstanding and unpaid bonds in the principal sum of \$524,500.00 be ordered surrendered into court, or some suitable agency, for the purpose of cancellation; that a reconveyance under the said First Trust Deed of the aforesaid real property to the debtor corporation be ordered made and recorded; that a satisfaction of the said chattel mortgage be ordered made and recorded; that the unpaid interest on said bonds be ordered waived and cancelled, and that new bonds and a new trust indenture be made and recorded as hereinafter provided.

### ARTICLE III.

1. The petitioning debtor corporation shall authorize and issue an issue of bonds (hereinafter for convenience referred to as the "new bonds") to be dated as of the first day of the earliest convenient calendar month after the formal and final approval of a plan of reorganization by the court. Such new bonds to mature in fifteen (15) years after the date thereof. There shall be no serial maturities but all new bonds so issued shall mature at the same time. Such new bonds shall be issued in the principal amount of \$340,925.00. Such new bonds shall bear interest at the rate of five per cent (5%) per annum, such interest to be payable on April 1st and October 1st (or such other semi-annual period as may be convenient) of each year, if, and to the extent that the earnings for the semi-annual period ending on the last day of February and August, respectively (or upon such other semi-annual period as will conform with the interest payment dates fixed) immediately preceding such interest payment dates and available for the payment of interest from funds by the trustee as hereafter provided, shall suffice for such

payment. Said new trust indenture may provide that distribution of interest to bondholders need be made only in amounts equal to one-half percent ( $\frac{1}{2}\%$ ) or some multiple thereof, of the principal amount of the outstanding bonds, and interest not earned and so available in any semi-annual period shall not accumulate.

2. The new bonds shall be secured by a new trust indenture in the nature of a trust deed and/or mortgage and/or chattel mortgage, upon all of the said lot of land approximately one hundred feet by sixty feet located on the Northeast corner of Eighth and Francisco Streets, Los Angeles, California, together with the thirteen (13) story reinforced concrete office and store building located thereon, together with all equipment, fittings and fixtures therein and appurtenances thereto, subject to the lien of taxes not delinquent, leases to tenants in possession, and other matters, if any, which shall be considered and approved by the court. Such new trust indenture shall be executed by the debtor corporation, and shall designate such a trustee as the court may select, and who shall be entitled to reasonable compensation for its services.

3. The new bonds shall not bear coupons but shall be registered both as to principal and interest, and payment shall be made by the trustee to the registered holders.

4. The new trust indenture shall provide that there shall be deposited monthly with the trustee, under the said new trust indenture, all the cash receipts from the operation of the said property remaining after:

(a) Disbursements for current operating expenses in connection with said property; provided, however, that there shall not be included in any such operating expenses

any amounts on account of depreciation, obsolescence or amortization, that no unreasonable salaries or other unreasonable charges shall be allowed or paid; and provided further that compensation for managerial services shall not exceed five per cent (5%) of all of the cash receipts from the operation of said property unless such cash receipts are less than six thousand dollars (\$6,000.00) per month, in which case such compensation shall not exceed three hundred dollars (\$300.00) per month (the term "managerial services" above being intended to refer to all services, including those rendered by executive officers of the debtor corporation, in managing said property but not such services as are rendered by accountants, attorneys or by the general staff of employees);

(b) Disbursements for repairs, maintenance, improvements, alterations, replacements and renewals in connection with said property, except as the same may be paid from insurance or condemnation moneys; provided, however, that no such disbursements aggregating more than \$5,000.00 in any one year commencing upon a designated date shall be chargeable against or paid from such cash receipts without the written approval of the trustee under said new trust indenture, and provided further that no disbursements for improvements, alterations, replacements and renewals aggregating more than \$2,500.00 in any one year commencing upon a designated date shall be chargeable without such approval;

(c) Disbursements for the fees, charges and expenses of the trustee under said trust indenture (not including acceptance, authentication and registration fees in connection with the original acceptance of the trust or the original issuance of said new bonds, which fees are to



be paid as part of the reorganization expenses and from funds to be provided for that purpose.)

(d) The replenishment of cash working capital of the debtor corporation, which working capital shall be used by the debtor corporation in connection with the operation of said property and applied solely to the payment of any items for which cash receipts may be disbursed in accordance with the foregoing provisions of this paragraph, in the event cash receipts shall be insufficient therefor, and/or, at the option of the debtor corporation, the same may be applied at any time or times to the payment of taxes, assessments and/or insurance premiums in connection with said property.

5. Said new trust indenture may further provide that the debtor corporation shall file with the Trustee on or before a designated day of each calendar month certified schedules and reports showing for the preceding calendar month the gross and net income from the trust property, and also the cash receipts and disbursements in connection with the said property including the amount required for deposit with the Trustee, and such other information as the Trustee shall require, and the debtor corporation may also be required to file with the Trustee within a designated number of days after the end of each semi-annual interest period similar statements, schedules and reports covering the operations for the preceding semi-annual period. In the event of conflict between the semi-annual and the monthly schedules and reports to be furnished by the corporation, reports properly certified to by public accountants shall be considered as controlling. The Trustee and/or his or its representatives shall have access to the books and records of the debtor corporation and of

the said property at any time or times for the purpose of making examination of the same, and such books and records and the schedules and reports above referred to shall be in such form and shall contain such data as may be reasonably required by the Trustee.

6. Said trust indenture shall specify that the said funds deposited with the Trustee thereunder and applicable to each semi-annual period from and after the date of the new bonds, shall be applied or set aside by the Trustee in the following manner and order of priority:

(a) In the event specified amounts of such funds represent rental deposits or advance rentals according to the above mentioned schedules and reports, then such amounts shall be reserved by the trustee until the particular period in which the same shall be earned, whereupon such amounts shall be applied as provided below:

(b) In the event that the debtor corporation's cash working capital (referred to in sub-paragraph (d) of the paragraph numbered 4 hereof) shall be reduced below the amount initially provided by reason of the fact that in any month disbursements chargeable against cash receipts from the operations of said property as provided in sub-paragraphs (a), (b) and (c) of the paragraph numbered 4 hereof, shall exceed cash receipts, or by reason of the application of said cash working capital or any part thereof to the payment of taxes, assessments and/or insurance premiums in connection with said property, then an amount not in excess of such deficit shall be returned by the Trustee to the debtor corporation in order to replenish such cash working capital;

(c) To the creation of cash reserves for the payment by said Trustee of taxes (including general taxes, in-

come and franchise taxes, assessments and insurance in connection with said property);

(d) To the payment of reorganization expenses (as herein defined);

(e) To the payment (semiannually) of interest on the new bonds at the rate of two per cent (2%) per annum;

(f) The remainder of such funds shall be applied as follows until the interest received by bondholders equals five per cent (5%) per annum:

(aa) One-half to bond retirement according to the procedure outlined below;

(bb) One-half for additional interest to the bondholders;

(g) The remainder of such funds shall be applied as follows:

The whole thereof shall be returned to the debtor corporation to be used for any corporate purposes, including dividends.

7. Said new trust indenture shall further provide that the new bonds shall be subject to redemption in whole or in part upon payment of the principal thereof and accrued interest thereof to the date fixed for redemption, but without the payment of any premium, all in accordance with the terms and conditions to be contained in the said trust indenture. In retiring new bonds from money paid the Trustee it shall purchase new bonds in the open market or shall acquire such bonds by tender or call for redemption.

8. The new trust indenture shall contain such provisions in respect to insurance as the court may specify and consider reasonable.

9. The new trust indenture shall specify that if the Trustee shall notify the debtor corporation that in its opinion said property is not being managed, operated or maintained in the best interest of the bondholders, and shall specify in writing changes which the Trustee shall desire, the debtor corporation shall within thirty (30) days:

(a) Make such changes in management, operation or maintenance as shall satisfy the Trustee, or,

(b) Submit to arbitration the question of whether in the best interests of the bondholders changes should be made in such management, operation or maintenance, one arbitrator to be appointed by the Trustee, one by the debtor corporation, and the third by the two so appointed, and if a majority of such arbitrators decide such question in the affirmative the debtor corporation shall thereafter within thirty (30) days make such changes as such majority shall prescribe, the expenses of such arbitration shall be deemed current operating expenses against said properties.

10. The new trust indenture shall also provide that the Trustee shall be entitled to the possession of the trust estate if the interest paid to holders of new bonds then outstanding in the last two semiannual distributions shall not have aggregated two percent (2%) upon the principal of such new bonds.

11. The new bonds and the new trust indenture may also contain such terms, provisions, covenants, and conditions as the court may deem reasonable or necessary to effect the purposes of reorganization, and before execution and delivery thereof, shall be approved as to form, terms, provisions, covenants and conditions by the Court and by all parties after hearing.

#### ARTICLE IV.

That all of the present owners, holders and/or depositories of the issued and outstanding Six Percent First Mortgage Gold Bonds issued under and secured by the First Trust Deed and Chattel Mortgage dated December 1st, 1934, referred to in Article II hereof, shall be required to surrender or cause the same to be surrendered for cancellation to the court, or some other suitable agency designated by the court for such purpose, and that such owners, holders and/or depositories shall receive in exchange thereof and therefor new bonds of the debtor corporation secured by the new trust indenture, as set forth in Article III hereof, which new bonds are to be issued to such owners, holders and/or depositories in an aggregate principal amount equal to sixty-five percent (65%) of the principal amount of the old or former issue of bonds, which such owners, holders and/or depositories shall or may have owned or held, or have surrendered, or be required to surrender, for cancellation and exchange as herein pro-

vided. That the court make an appropriate order and provision to effect such surrender and exchange, and provide that if the said former bonds are not surrendered or caused to be surrendered for cancellation by the owners, holders and/or depositories thereof and exchanged for new bonds within a limited specified time that the new bonds of the debtor corporation in a principal amount equal to sixty-five percent (65%) of the principal amount of the old or former bonds which have not been so surrendered for cancellation and exchange be deposited with some depository to be designated by the court, and that such old or former bonds not so surrendered for cancellation and exchange be declared null and void and ordered cancelled, and that the rights of the owners, holders and/or depositories thereof be terminated, and that to all intents and purposes such owners, holders and/or depositories shall be considered as the owners and holders of new bonds of the debtor corporation equal to sixty-five percent (65%) of the aggregate amount of such old or former bonds not so surrendered for cancellation and exchange.

#### ARTICLE V.

In connection with the payment of the expenses of reorganization it is contended and expected that the cash which the said Leigh M. Battson, as Trustee, has on hand in an amount in excess of \$36,000.00 should be and will

be ample to provide and take care of all expenses of reorganization. In that connection it is anticipated that all expenses of reorganization (which term where used in this Plan includes expenses and requirements for the Trustee's fees, if any, under the former bond and trust indenture, committee expenses, attorney's fees, and all other requirements in connection with the reorganization) will be paid:

(a) From cash held by the Depository and/or Trustee under the present indenture;

(b) From cash which the Trustee under the new indenture may apply pursuant to subdivision (d) of the paragraph numbered 5 of Article III;

(c) From funds obtained by the debtor corporation by its note or notes which may be either unsecured or secured;

(d) From funds obtained by the debtor corporation from the operation, management and maintenance of the said building.

## ARTICLE VI.

The debtor corporation shall assume and agree to pay and perform all contracts and obligations of the present Trustee, his predecessors or successors in trust in connection with the management and operation of the said property and remaining unpaid or unperformed.

## ARTICLE VII.

That there are no unsecured creditors of your petitioning debtor corporation. That the creditors of the said corporation are those represented by and being the owners and holders of the issued outstanding and unpaid bonds herein referred to in Article II hereof. That ample, adequate and sufficient provision and protection has been made in the proposed plan of reorganization for the security of the claims of each and all of the said creditors in that the proposed plan offers to them the same security which they have had; that there are no other creditors and/or stockholders which will be affected by the proposed plan other than the aforesaid owners, holders and/or depositories of the said bonds and the stockholders of the petitioning debtor corporation. By reason thereof it will not be necessary to obtain the confirmation of said proposed plan by a two-thirds majority of said creditors, said proposed plan being within the exception set forth in Subdivision b (5) of Section 77-B of the Acts of Bankruptcy as Amended.

## ARTICLE VIII.

This Plan of Reorganization is subject to the approval and acceptance of the court and of any public authorities having jurisdiction over the same, and the same is filed pursuant to Order of Court heretofore made herein and Petition for Reorganization heretofore filed herein, reference to each of which is hereby made.



WHEREFORE, your petitioning debtor prays that this Proposed Plan of Reorganization be considered, approved and adopted, and that all necessary and proper proceedings be had and instituted to carry the same into force and effect, and for such other and further relief as may seem meet and proper, just and equitable in the premises in order to effect the intent and purposes of the said section 77-A and B of the Bankruptcy Acts as Amended, and of the Petition for Reorganization on file herein.

FRANCISCO BUILDING CORP. LTD.,

BY A. R. Walker

President

George Hess

Secretary

Elbert E. Hensley

John H. Klenke

Attorneys for Petitioner.

[Endorsed]: Filed May 20, 1935, at 25 min. past 3 o'clock P. M. R. S. Zimmerman, Clerk By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552-J.

ORDER FIXING TIME AND PLACE OF HEARING OF PROPOSED PLAN OF REORGANIZATION OF THE FRANCISCO BUILDING CORP., LTD.

The above captioned matter having heretofore come on for hearing upon the verified petition of the above named debtor, and the Court having been fully advised in the premises and having been satisfied that the said petition complied with the Acts of Bankruptcy of the United States, as amended, and particularly with sections 77(a) and 77(b) thereof, as approved June 7, 1934, and that the said petition was filed in good faith, and the Court having heretofore made its order that the above named debtor shall within thirty (30) days from the 20th day of April, 1935, submit a proposed plan of reorganization to this Court to the creditors of the said debtor and that after such proposed plan of reorganization has been submitted to this Court that the debtor shall bring the same on for hearing before this Court, proper notice thereof to be given to the Trustee and Bondholders' Protective Committee referred to in the said petition, and shall cause a notice of said hearing to be published at least once a week for two consecutive weeks in the Los Angeles Daily Journal; and it further appearing to the Court that the debtor herein has filed a proposed plan of reorganization pursuant to the aforesaid order.

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing upon the said proposed plan of reorganization be had in the Courtroom of the Honorable William P. James, Judge of the above entitled Court, situate in the Federal Building, Los Angeles, California, on Monday the 1st day of July, 1935, at the hour of 2:15 o'clock P. M. thereof, or as soon thereafter as the same can be heard.

IT IS FURTHER ORDERED that a true and correct copy of this order be published at least once a week for two consecutive weeks in the Los Angeles Daily Journal published at Los Angeles, California, which said paper is hereby designated a paper of general circulation for the said purpose.

IT IS FURTHER ORDERED that a copy of this order, together with a copy of the proposed plan of reorganization be served upon the Trustee, Leigh M. Battson, in possession of the property named and described in the debtor's petition, by forwarding the same in a sealed stamped envelope, registered mail, addressed to the said Leigh M. Battson at 541 South Spring Street to be deposited in said mail not later than the 25 day of May, 1935, which shall be deemed to be sufficient and adequate notice to the Trustee.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the proposed plan of reorganization be served upon the Bondholders Protective Committee mentioned in the said debtor's petition, by enclosing a copy of the said order and proposed plan in a

sealed stamped envelope, registered mail, addressed to the following named persons at the following addresses, to-wit:

H. H. Cotton  
639 South Spring Street  
Los Angeles, California

Charles C. Irwin  
Ambassador Hotel  
Los Angeles, California

John Treanor  
621 South Hope Street  
Los Angeles, California

J. B. Van Nuys  
400 Van Nuys Building  
Los Angeles, California;

to be deposited in the mail not later than the 25 day of May, 1935, which shall be deemed to be sufficient and adequate notice to the Bondholders' Protective Committee and to the owners, holders and/or depositories of said bonds.

Reference is hereby made to the original petition for reorganization and the proposed plan of reorganization on file herein for further particulars.

IT IS FURTHER ORDERED that all persons, firms, associations, corporations, and/or committees objecting and/or excepting to the proposed plan of reorganization on file herein, shall file their objections and/or exceptions thereto in writing with the Clerk of the above entitled Court, at his office, Federal Building, Los Angeles, California, serving a copy thereof upon Elbert E. Hensley, Esq., attorney for the petitioning debtor, at his office situate 615 Insurance Exchange Building, Los Angeles, California, at least five (5) full days prior to the day of the hearing on the said proposed plan of reorganization; said written objections and/or exceptions to the said proposed plan shall clearly and concisely point out, specify, designate and set forth the exact objections and/or exception made or taken.

DONE IN OPEN COURT this 20 day of May, 1935.

Wm. J. James

Judge

[Endorsed]: Filed May 20, 1935 at 25 min past 3 o'clock P. M. R. S. Zimmerman, Clerk By Theodore Hocke Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552-J.

OBJECTIONS AND EXCEPTIONS OF LEIGH M BATTSON, AS TRUSTEE, AND OF BONDHOLDERS' COMMITTEE TO DEBTOR'S PROPOSED PLAN OF REORGANIZATION.

LEIGH M. BATTSON, Trustee, and H. H. COTTON, CHARLES C. IRWIN, JOHN TREANOR and J. B. VAN NUYS, as the Medical Center Building First Mortgage Bondholders' Committee, which committee owns \$483,800.00 in principal amount of \$524,500.00 principal amount of bonds of Morgan Building Corporation now outstanding, said ownership constituting 92.24 per cent. of the outstanding bonds, respectfully present their objections and exceptions to the Debtor's proposed plan of reorganization as follows:

I. DEBTOR'S PLAN OF REORGANIZATION AFFECTS THE RIGHTS OF THE BONDHOLDERS, BUT FAILS TO PROVIDE THAT IT SHALL BECOME EFFECTIVE ONLY UPON THE ACCEPTANCE IN WRITING BY THE HOLDERS OF TWO-THIRDS IN AMOUNT OF SAID BONDS.

(1) Said plan proposes to deprive the bondholders of interest on the bonds in the sum of \$128,685.21 accrued as of July 1, 1935, and unpaid, and to scale down the amount of outstanding bonds from \$524,500.00 to \$340,925.00, thus reducing each bondholder's holdings by more than 47 per cent. Said plan would reduce the

principal amount of the bonds by 35 per cent. Thus, it is proposed to reduce the principal of the bonds by \$183,-575.00 and to reduce the total claim of the bondholders as of July 1, 1935 for interest and principal by \$312,-260.21.

(2) Said plan, under the provisions of Article V, proposes to use funds belonging to the bondholders, for the purpose of paying all of the expenses of the reorganization which Debtor has proposed for his own benefit. Said funds have been collected by Leigh M. Battson, trustee, under the terms of the trust deed and chattel mortgage executed for the purpose of securing said bonds. Said trustee has been in possession of the property since September 26, 1933, and in his capacity as trustee has sequestered for the benefit of the bondholders the sums which the Debtor proposes to use to carry out his plan of reorganization.

(3) Said plan proposes to deprive the bondholders of their right to retain the lien until the indebtedness thereby secured is paid.

(4) Said plan proposes to deprive the bondholders of the right to realize upon the security by a sale conducted by the trustee appointed in the trust indenture or by a judicial public sale.

(5) Said plan proposes to deprive the bondholders of the right to determine when such sale shall be held, subject only to the discretion of a court of equity.

(6) Said plan proposes to deprive the bondholders of the right to protect their interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the

satisfaction of the debt either through the receipt of the proceeds of a fair competitive sale or by taking the property itself.

(7) Said plan proposes to deprive the bondholders of the right to have the trustee named in the trust deed and chattel mortgage control the property during the period of default and to have the rents and profits collected by said trustee sequestered for their benefit.

## II. DEBTOR'S PROPOSED PLAN OF REORGANIZATION DOES NOT ADEQUATELY PROTECT THE BONDHOLDERS.

(1) Subsection (b) of Section 77B requires that a plan of reorganization shall provide, in respect of each class of creditors of which less than two-thirds in amount shall accept the plan, adequate protection for the realization by them of their interests.

(2) Said plan proposes to deprive the bondholder of substantive rights, which rights are set forth under Paragraph I of these objections.

(3) Under the provisions of said Plan, when earnings of the property are low the bondholders will receive little or no interest. In periods when earnings are high, all earnings in excess of 8 per cent per annum of the outstanding new bonds 5 per cent which, if earned, are required to be paid as interest and 3 per cent of which, if earned, are required to be paid on the principal, would go to the stockholders of the Debtor. This circumstance arises because it is provided that principal and interest on the new bonds is to be payable solely out of income and that said interest is to be non-cumulative.



(4) Under the provisions of said Plan and maximum amount of bonds which are required to be retired out of income is 3 per cent per year, or approximately 45 per cent over the entire 15 year term of the bonds. This means that unless the Debtor chooses voluntarily to devote more earnings to the retirement of bonds than the 3 per cent per annum which the proposed trust indenture requires (if 3% is earned) there will be unretired at maturity more than 55 per cent of the initial issue. The proposed plan requires the first 2 per cent earned to be applied toward interest; the succeeding 6 per cent must be divided 3 per cent to interest and 3 per cent to principal; if said succeeding 6 per cent should not be earned, whatever, if anything, is earned on account of it is to be divided equally between principal and interest. These payments are not cumulative. Thus, it is possible that during some years the earnings would be insufficient to pay anything on account of principal and that during others, the earnings might be more than adequate. Debtor would be allowed to keep the excess. The present earnings are about 3 per cent of the proposed issue. At this rate, under the proposed plan, more than 85 per cent of the bonds would be unretired at maturity. Whatever the earnings might be, the proposed plan does not require the retirement of more than 45 per cent of the bonds prior to maturity.

(5) The proposed plan permits the Debtor to pay dividends even though it may not have paid any interest or principal in previous years.

(6) The proposed plan requires that net income, if any, equal to only 8 per cent per annum of the principal amount of outstanding bonds shall be devoted to the pay-

ment of principal and interest. The balance of net income, however large in amount, can be distributed to the Debtor's stockholders, even though the bondholder may not have received any principal or interest payments during prior years.

### III. IF SECTION 77B PURPORTS TO ALLOW THE COURT TO SCALE DOWN THE INDEBTEDNESS OF THE BONDHOLDERS AND TO OTHERWISE AFFECT THEIR SUBSTANTIVE RIGHTS, IT IS UNCONSTITUTIONAL.

Subsection (b) of Section 77B provides that the consent of two-thirds in amount of a class of creditors is not necessary if the plan provides adequate protection for the realization by them of the value of their interests and provides that such protection may be "by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case equitably and fairly provide such protection." If the proposed plan were to be approved upon a finding that it equitably and fairly provided adequate protection to the bondholders, it would result in the depriving of the bondholders of substantive rights and would constitute the taking of property without due process of law in violation of the Fifth Amendment of the United States Constitution.

Louisville Joint Stock Land Bank v. Redford  
May 27, 1935—Frazier-Lemke Act), 55 Sup.  
Ct. Rep. 854.

IV. THE DEBTOR CANNOT CARRY OUT THE PROPOSED PLAN BECAUSE A PERMIT OF THE CALIFORNIA CORPORATION COMMISSIONER WILL BE REQUIRED AND UNDER THE RULES AND REGULATIONS OF SAID COMMISSIONER, A PERMIT CANNOT BE OBTAINED TO ISSUE THE NEW BONDS.

(1) Section 77B provides that the judge, before confirming the plan of reorganization, shall be satisfied, among other things, that the "debtor, and every other corporation, issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to take all action necessary to carry out the plan."

(2) Under the California Corporate Securities Act, the debtor cannot issue the new bonds proposed by the plan, unless it obtains a permit from the Corporation Commissioner.

(3) The proposed plan does not provide that it is conditional upon the approval of the Corporation Commissioner.

(4) Under the rules and regulations adopted by the Corporation Commissioner, the debtor cannot obtain a permit to issue the new bonds proposed by its plan.

(a) Under Section 1 of said rules and regulations, a permit of the Corporation Commissioner will be required to carry out the proposed plan.

"Section 1.

Any contemplated change in an outstanding issue which involves the creation and 'sale' of a new 'security' will

require a permit for such new security. Such a change would ordinarily include a change in the interest rate, face amount, maturity dates, nature of security, sinking fund provisions, release provisions, and/or any other substantial change in the property or contractual rights of the security holders.”

(b) The proposed plan does not comply with the policy prescribed by Section 4 of said rules and regulations in that it is proposed that the face amount of the refunding issue is only 65 per cent of the face amount of the outstanding issue.

“Section 4.

Normally a refunding issue should be in a like face amount as that outstanding. \* \* \*”

(c) The proposed plan does not comply with the policy prescribed by Section 5 of said rules and regulations in that it is proposed that the interest is not to be cumulative.

“Section 5.

Where the coupon bears a combined minimum and maximum rate, the unpaid interest differential shall ordinarily be cumulative. \* \* \*”

(d) The proposed plan does not comply with Section 6 of said rules and regulations in that it permits the payment of dividends prior to the retirement of the bonds, does not require the payment of accumulated interest prior to the payment of dividends and does not limit the dividends to a cumulative rate of 7 per cent per annum. ,

“Section 6.

Where the reorganization plan contemplates the issuance of stock in addition to the refunding issue, ordinarily the plan shall provide for the full retirement of the refunding issue prior to the payment of dividends on the stock. In these unusual instances where dividends on the stock are permitted prior to the full retirement of the refunding issue, the plan shall provide that the issuer shall first meet all fixed charges and operating expenses annually as well as make up fully any accumulation thereof for previous years, before any dividends are declared or paid on the stock.

“In any event, where dividends are permitted on the stock prior to full retirement of the refunding issue, the dividends should be not in excess of a cumulative rate of 7 per cent per annum.”

(e) The proposed plan does not comply with Section 7 of said rules and regulations in that it does not require two-thirds of the net earnings above fixed charges and operating expenses to be devoted to the retirement of the new bonds.

“Section 7.

“The plan ordinarily shall provide that net earnings over and above the fixed charges shall be devoted exclusively to the retirement of the refunding issue. No plan will be approved where less than two-thirds of the net earnings above fixed charges and operating expenses are devoted to the retirement of the refunding issue. In any plan so approved if the one-third of the net earnings is in excess of the fixed rate on the stock such excess shall be applied to the retirement of the refunding issue.”

(f) The proposed plan does not comply with Section 11 of said rules and regulations in that it advances the property owner ahead of the bondholder in so far as accrued interest and 35 per cent of the principal amount of the bonds is concerned, for it proposes to cancel said accrued interest and to give the bondholder 35 per cent less bonds.

“Section 11.

No reorganization plan will be approved which contemplates the recognition of rights subordinate to a prior lien if after the reorganization the same relative position is not maintained by surviving interests.”

V. DEBTOR IS NOT INDEBTED TO LEIGH M. BATTSON, TRUSTEE, OR THE BONDHOLDERS AND THEY ARE NOT ITS CREDITORS SINCE THE BONDS WERE NOT ISSUED OR ASSUMED BY DEBTOR.

(1) The bonds were issued by Morgan Building Corporation and not Debtor. Debtor has acquired the property which stands as security for the bonds but has not assumed the bonds.

In re Draco Realty Corp. (Oct. 11, 1934), a decision of the United States District Court, Southern District of New York, reported at section 3045 of Commerce Clearing House Bankruptcy Law Service:

“A petition for reorganization of Draco Realty Corporation under Section 77B of the Bankruptcy Act was filed by three alleged creditors. The Draco corporation asks dismissal of the petition on the ground that the peti-

tion shows on its face that the petitioners are not creditors. The petition shows that petitioners are holders of certificates representing shares in a bond and mortgage in the unpaid amount of \$3,417,000. The mortgage was made by Winfred Realty Corporation and covers real estate known as the Drake Hotel. Some months after the execution of the mortgage, the Winfred Corporation sold the premises to the Draco Corporation, and it is averred that the bill of sale recognized the mortgage. Finally, it is stated that the mortgage contained a clause to the effect that all covenants of the mortgagor were to be binding on its successors and assigns as well as a clause that every covenant in the mortgage should be a covenant running with the land.

“From the facts pleaded, it is evident that the petitioners are not creditors of the Draco Corporation. They are creditors of the Winfred Corporation whose bonds they hold, and they also have a lien on property now owned by the Draco Corporation. But they are not creditors of the latter company. The rule recognized in New York and other states is that a mortgagee has no claim against the grantee of mortgaged premises unless the latter has assumed the mortgage. Here it is apparent that the Draco Corporation took the premises subject to the mortgage, never assuming it. No case for disregarding the separate corporate entity of the Draco Corporation is made out, and the debts of the Winfred Corporation are not its debts.”

(2) The plan of reorganization proposes to affect the rights of the bondholders who are not even creditors of the Debtor.

(3) The corporation really obligated on the bonds, Morgan Building Corporation, will be relieved of its obligation under the proposed plan. This illustrates the fallacy of treating Francisco Building Corporation as the debtor of the bondholders and the bondholders as the creditors of Francisco Building Corporation. The bondholders are the creditors of the maker of the bonds, Morgan Building Corporation.

Respectfully Submitted,

O'MELVENY, TULLER & MYERS,  
and Homer I. Mitchell,

Attorneys for Leigh M. Battson, trustee, and the  
Bondholder's Committee.

[Endorsed]: Received copy of within Objections this  
25 day of June 1935 Elbert E. Hensley Attorney for  
Francisco Bldg. Corp. Ltd. Filed R. S. Zimmerman  
Clerk at 52 min. past 11 o'clock Jun. 25 1935 A. M. By  
Theodore Hocke Deputy Clerk



[TITLE OF COURT AND CAUSE.]

No. 25552-J.

PETITION OF BONDHOLDERS' COMMITTEE IN SUPPORT OF ITS OBJECTIONS AND EXCEPTIONS TO DEBTOR'S PROPOSED PLAN OF REORGANIZATION AND FOR AN ORDER (1) REJECTING SAID PLAN, (2) VACATING AND SETTING ASIDE THE ORDER RESTRAINING SALE, AND (3) DISMISSING PROCEEDINGS UNDER SECTION 77B.

H. H. COTTON, CHARLES C. IRWIN, JOHN TREANOR and J. B. VAN NUYS as the Medical Center Building First Mortgage Bondholders' Committee file this petition in support of their objections and exceptions to Debtor's Proposed Plan of Reorganization, and respectfully represent as follows:

I.

On or about January 27, 1925, Morgan Building Corporation (now Francisco Building Corp., Ltd., Debtor) issued Medical Center Building Six Per Cent First Mortgage Gold Bonds dated as of December 1, 1924, in the aggregate principal amount of \$615,000.00, which bonds were sold to the public. On or about January 27, 1925, as a part of the same transaction said Morgan Building Corporation made and executed and delivered to William K. Bowes, Trustee, and his successor trustee, a trust deed dated as of December 1, 1924. Said trust deed was recorded on January 27, 1925 in Book 4817, Page 113 of Official Records of Los Angeles County. Under the

terms of said trust deed said Morgan Building Corporation, to secure the payment of said bonds, warranted, granted, released, bargained, sold, transferred, assigned, conveyed, aliened, remised, confirmed, pledged, mortgaged and set over unto William K. Bowes, Trustee, and to his successors in trust, the following described property in the City of Los Angeles, County of Los Angeles, State of California:

All of Lot 1 and a portion of lot 2 of the Jackins Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2, Page 71 of Maps, in the office of the County Recorder of said County, described as a whole as follows:

Beginning at the intersection of the Easterly line of Francisco Street, 60 feet wide, with the Northerly line of Eighth Street, 60 feet wide, as shown on said map; thence along said Eighth Street, South 57 degrees 47 minutes East, 60 feet to a point in the Southerly line of said Lot 2; thence parallel with said Easterly line of Francisco Street, North 38 degrees 2 minutes East, 100 feet to a point in the Northerly line of said Lot 2; thence along the Northerly line of said Lots 2 and 1, North 57 degrees 47 minutes West, 60 feet to the Northwesterly corner of said Lot 1 in the Easterly line of said Francisco Street; and thence along said Francisco Street, South 38 degrees 2 minutes West, 100 feet to the point of beginning;

together with any and all buildings, improvements and appurtenances now standing or at any time hereafter constructed or placed upon said land, or any part thereof, including all boilers, dynamos, motors, partitions, screens, curtain fixtures, window shades, awnings, vaults, safes,

furnaces, vacuum cleaners, incinerators, refrigerating, heating, plumbing, ventilating, gas and electric light fixtures, safety devices, call systems, show-cases, sprinklers and sprinkler systems and equipment, elevators and fittings, hoists, pumps, tanks and machinery, appliances, plants, apparatus, equipment and fittings and fixtures of every kind in, or that shall be placed in, any building or buildings now or hereafter standing on said premises or any part thereof, and the reversion and reversions, remainder and remainders in and to said premises, and each and every part thereof, and also together with all the rents, issues, income and profits thereof (which are hereby specifically assigned), and together with all and singular the tenements, hereditaments, easements, ways, rights, privileges, franchises, appendages and appurtenances to said estate and property belonging or in anywise appertaining, and together with all the right, title and interest which the Company may now have or may at any time hereafter acquire in and to the fee to any and all streets or alleys in front of and/or adjoining said lands or any part thereof, and all the estate, right, title, interest, property, possession, claim or demand whatsoever of the Company, either at law or in equity, either in possession or expectancy of, in and to the above described land, property and estate, and together with all and singular the personal property of every kind, nature, and description whatsoever of the Company situated or to be situated in any building or buildings now or at any time hereafter standing on said above described land or any part thereof which shall be for the use of the occupants of the building or buildings generally or pertaining to the use of any such building or buildings as an office and store building or otherwise.

## II.

Under the terms of said bonds and said trust deed, Morgan Building Corporation, hereinafter referred to as the "Trustor," agreed to pay the principal of said bonds and interest accrued thereon. Its agreement was to pay interest on said bonds, evidenced by coupons, semi-annually at the rate of six per cent per annum commencing June 1, 1925. Its agreement was to pay principal in the sum of \$16,000.00 on December 1, 1927, in the sum of \$17,000.00 on December 1, 1928, in the sum of \$18,000.00 on December 1, 1929, in the sum of \$19,000.00 on December 1, 1930, in the sum of \$20,500.00 on December 1, 1931, in the sum of \$22,00.00 on December 1, 1932, in the sum of \$23,500.00 on December 1, 1933, in the sum of \$25,000.00 on December 1, 1934, in the sum of \$27,000.00 on December 1, 1935, in the sum of \$29,000.00 on December 1, 1936, in the sum of \$31,000.00 on December 1, 1937, in the sum of \$33,000.00 on December 1, 1938, and in the sum of \$334,000.00 on December 1, 1939. The Trustor promised to make said semi-annual payments of interest to the depositary named in said trust deed in equal monthly installments. The Trustor promised to make said annual payments of principal to said depositary in equal monthly installments. The Trustor also promised to pay all taxes and assessments promptly as they became due. The Trustor also promised to pay all United States federal income taxes, assessments or charges required to be paid upon the interest and income yielded by the bonds.

## III.

By payment of serial maturities, including bonds which matured December 1, 1931, the amount of said bond issue was reduced to \$524,500.00, and bonds in said sum are now outstanding and unpaid. On June 1, 1932 the Trustor failed to pay the interest which it had promised and agreed to pay upon said date. On December 1, 1932 the Trustor failed to pay the installment of principal which it had promised and agreed to pay upon said date. No payments on account of principal or interest have been made since December 1, 1931.

## IV.

Said trust deed provides that in case default shall be made in the payment of the principal or of any interest or income tax payments on any of said bonds and such default shall continue for a period of thirty days after written notice thereof to the Trustor by the Trustee specifying wherein such default consists, then and in any such case the Trustee, in his discretion, may, and upon the written request of the holders of not less than one-fourth in principal amount of the bonds outstanding, shall, declare the principal of all bonds secured by said trust deed and then outstanding to be due and payable immediately, and that upon such declaration the said principal together with the interest accrued thereon shall become and be due and payable immediately.

Leigh M. Battson, who had succeeded as Trustee under the terms of said trust deed, did on or about July 5, 1933 give written notice to the Trustor of the defaults then existing and after the expiration of thirty days, to-wit, on or about October 31, 1933, did declare all of the bonds then outstanding to be due and payable immediately

in accordance with the terms of said trust deed. Under the terms of said trust deed the Trustor promised and agreed to pay interest at the rate of seven per cent per annum upon delinquent interest coupons and upon delinquent installments of principal. The total amount of principal and interest coupons, together with interest upon the delinquent coupons and interest on delinquent installments of principal which will be unpaid as of July 1, 1935, is the sum of \$128,685.21.

## V.

Said trust deed provides that in any case in which the Trustee has the right to declare the principal of all bonds secured and then outstanding to be due and payable immediately, the Trustee shall be entitled to take actual possession of the premises and to hold, manage and operate the premises and to collect the rents thereof. Said trust deed further provides that in connection with such operation and management the Trustee shall, after paying out of the revenue from said premises any amounts due the Trustee under the trust deed and all expenses of management and operation and all taxes, assessments or charges or liens upon the premises, together with reasonable attorneys' fees, and after retaining reasonable Trustee's fees and such further sums as may be sufficient to indemnify the Trustee against any liability, loss or damages on account of any matter or thing done in good faith in pursuance of the duties of the Trustee, apply the residue, if any, first to the payment of the defaulted coupons with interest thereon at the rate of seven per cent per annum, next to the payment of accrued interest on bonds which shall have become due by lapse of time or declaration, next to the payment of any income tax due the holder or holders

of any bond or coupon, and next to the payment of the principal of said bonds. Said trust deed provides that the Trustor is not entitled to the return of the possession of the property until payment of whatever may be due for principal and interest on said bonds or for any other purpose specified in said trust deed.

On September 26, 1933 Leigh M. Battson, Successor Trustee, under the terms of said trust deed, took possession of the property described in said trust deed and ever since said date has managed and operated said property, applying the proceeds of said operation in accordance with the terms of said trust deed. Said Leigh M. Battson as such trustee had sequestered the sum of \$28,821.99 from the operation of said property as of June 17, 1935, and had incurred obligations payable as of said date in the amount of \$1,586.19.

## VI.

Said trust deed further provides that in case default shall be made in the payment of principal or interest or any income tax payment on any of said bonds, or in the due observance or performance of any covenant or condition whatsoever required to be kept or performed by the Trustor under the terms of said trust deed, and such default shall continue for a period of thirty days after written notice thereof, the Trustee may, without any action on the part of any bondholder and upon written request of the holders of not less than one-fourth in principal amount of said bonds outstanding shall, sell all of the property described in said trust deed, at public auction, upon such terms as to credit or security for payment as the Trustee may think proper or expedient, and upon such sale may execute and deliver to the purchaser a good and

sufficient conveyance at law which shall be conclusive evidence of the regularity and validity of such sale and conveyance against the Trustor, its successors or assigns, and all persons claiming under it or them. Said trust deed requires that notice of said sale be posted for twenty days in three public places in the City of Los Angeles, State of California, and published once a week for the same period in some newspaper of general circulation published in said city and posted in some conspicuous place on the property to be sold at least twenty days before the date of sale. Said trust deed also provides that the Trustee may in his discretion proceed to foreclose said trust deed as a mortgage and to cause the property and assets described therein to be sold by appropriate proceedings in any court of competent jurisdiction. Said trust deed further provides that in case of a sale of said premises the proceeds of such sale shall be applied (a) to the payment of reasonable compensation of the Trustee, his agents, attorneys and counsel, and all costs and expenses of the sale; (b) to the payment of all other expenses of the trust; (c) to the payment of the whole amount of principal and interest then unpaid on the bonds secured thereby with interest on the overdue principal and on the overdue interest coupons at the rate of seven per cent per annum; (d) to the pro rata payment of any income tax due the holder of any bond for interest coupons; (e) to the payment of the surplus, if any, to the Trustor or to whomsoever shall be entitled thereto. Said trust deed further provides that at any such sale any bondholder or the Trustee may bid for and purchase said premises or any part thereof; that the purchaser at any sale shall be entitled in making settlement or payment for the property purchased to use and apply any bonds and any matured and unpaid coupons secured by said trust deed by present-



ing such bonds and coupons in order that there may be credited thereon the sum apportionable and applicable to the payment thereof out of the net proceeds of such sale.

On or about May 18, 1932 a bondholders' protective committee was formed, which Committee is known as "Medical Center Building First Mortgage Bondholders' Committee." Petitioners H. H. Cotton, Charles C. Irwin, John Treanor and J. B. Van Nuys are the present members of said Bondholders' Committee. The powers of said Committee are defined by written agreement dated May 18, 1932. Said agreement provides that the word "mortgagor" wherever used therein shall include successors to the title of the property described in the trust deed. Said written agreement contains the following provisions:

"The Depositors, severally and respectively, do hereby sell, assign, and transfer to the Committee, its successors and assigns, the full, legal, equitable and beneficial title to all bonds and/or coupons deposited hereunder for all and singular the purposes hereof, and severally and respectively agree that the Committee shall be and it is hereby vested with every right, power and authority of whatsoever character, nature or purpose, in order to enable the Committee to carry out and perform all and singular the purposes and intent of this Agreement. \* \* \* The Committee shall have and may exercise, in its discretion, all the rights and powers of the respective owners or holders of said bonds and/or coupons deposited hereunder; and without in any manner limiting the other provisions hereof and the power and authority vested in the Committee through the sale and transfer to it of the deposited bonds and/or coupons, it is further agreed by the Depositors that the Committee shall be fully authorized, in its discretion:

(a) To transfer the deposited bonds and/or coupons, or cause the same to be transferred, into the name of the Committee or its nominees, and to attend either in person or by proxy all meetings of bondholders or creditors of the Mortgagor, and as the holders and owners of said bonds and/or coupons to vote upon all questions which may arise at such meetings, and also as such holders and owners to consent either in writing or otherwise in respect to any and all matters; \* \* \*

(e) To institute or cause to be taken or instituted or to intervene in or become a party to or exercise control over such suits, actions, defenses or proceedings, at law, in equity or otherwise, and to give such directions, execute such papers and do such acts, whether under or for or in connection with the foreclosure of said Trust Indenture, or otherwise, as the Committee shall deem judicious or proper in order to protect the security provided by said Trust Indenture, or to procure the payment of the deposited bonds and/or coupons, with interest thereon as therein provided; to deposit or cause the Depositary or any Sub-Depositary to deposit any or all of said bonds and/or coupons as exhibits or evidence in any suits, actions or proceedings as required by law, or the ruling of any court, master in chancery or commissioner; and to represent, bind and act for the Depositors in any and all such matters as fully and completely as the Depositors themselves might do; \* \* \*

(j) To do or cause to be done whatever (including the execution and delivery of proper instruments) the Committee in its sole discretion may deem expedient, necessary or proper to preserve, protect, guard, secure, promote or enforce the rights and interests of the Depositors

and in such manner and upon such terms as the Committee shall deem expedient; \* \* \*

(n) To exercise, assert and enforce by legal proceedings or otherwise, in its uncontrolled discretion, any powers vested in or conferred upon the owners and holders of said bonds and coupons by the terms thereof or under the terms of said Trust Indenture or otherwise, and in general to do such acts as the Committee in its uncontrolled discretion may deem judicious or proper in order to carry out fully and effectively the purposes of this Agreement; \* \* \*”

Said Bondholders' Committee is now the owner and holder of bonds in the principal amount of \$483,800.00, together with appurtenant coupons. Said bonds owned by said Bondholders' Committee constitute 92.24% of the outstanding bonds.

## VII.

Petitioners allege, on information and belief, that title to the property covered by said trust deed dated December 1, 1924, was acquired by Francisco Building Corp. Ltd. in the following manner:

By a deed of trust dated December 10, 1924 and recorded on January 27, 1925 in Book 4830, page 31, Official Records of Los Angeles County, said Morgan Building Corporation conveyed said property to Charles S. Crail as trustee to secure the payment of two promissory notes in the total amount of \$80,000.00; said trust deed was expressly subject to the trust deed securing said bonds of Morgan Building Corporation.

Prior to September 27, 1929, said promissory notes were assigned to H. H. Streight and on said date the property

covered by said trust deed dated December 10, 1924, was sold by Thomas Haverty, successor trustee thereunder, for default of the Morgan Building Corporation in the payment of principal and interest on said notes. At said sale the property was purchased by said H. H. Streight for the sum of \$85,000.00.

Said H. H. Streight, as assignee of said promissory notes and as purchaser at said trustee's sale, was the attorney and representative of the persons to whom the stock of Francisco Building Corp. Ltd. was later issued and who were the promoters of said corporation.

By deed recorded February 5, 1930 in Book 9732, page 135, Official Records of Los Angeles County, said H. H. Streight conveyed said property purchased by him at said trustee's sale to Francisco Building Corp. Ltd. Said conveyance was made in consideration of the issuance of shares of Francisco Building Corp. Ltd. to the persons represented by said H. H. Streight.

Francisco Building Corp. Ltd. thus acquired title to the property, subject to the prior lien of the trust indenture securing the bonds of Morgan Building Corporation, but did not assume liability on the bonds.

## VIII.

On or about October 11, 1933 the Bondholders' Committee commenced negotiations with Francisco Building Corp., Ltd. in an attempt to work out a plan of reorganization. Said negotiations continued for a period of approximately five months, but the Bondholders' Committee found it impossible to work out a plan of reorganization satisfactory to both the Committee and to Francisco Building Corp., Ltd. On or about March 7, 1934 the Bond-

holders' Committee concluded that further negotiations would be futile and decided to work out a plan of its own. On or about June 26, 1934 the Bondholders' Committee completed the preparation of a plan of reorganization. A copy of said plan is attached hereto as a part of the registration statement, which is attached hereto, marked Exhibit A and made a part hereof. Counsel for the Bondholders' Committee spent approximately eight months in preparing the registration statement for filing with the Securities and Exchange Commission and in negotiations with the representatives of said Commission looking toward the inclusion of such information in said registration statement as was required by said Commission. Said registration statement, a copy of which is attached hereto, marked Exhibit A and made a part hereof was filed with the Securities and Exchange Commission and became effective on March 5, 1935. Said plan of reorganization was submitted to the bondholders on March 8, 1935. On said date there were on deposit \$415,200.00 principal amount of bonds out of \$524,500.00 principal amount then outstanding. Said bonds on deposit constituted 79.16% of all outstanding bonds. No holders of certificates of deposit or of bonds have dissented from or objected to the plan of reorganization adopted by the Bondholders' Committee, and since the submission of such plan the bonds deposited with the Committee have increased. There are now on deposit with the Bondholders' Committee \$483,800.00 principal amount of bonds, constituting 92.24% of all bonds outstanding. Under the terms of the above mentioned agreement dated May 18, 1932 the depositors of all of said bonds have accepted the plan of reorganization adopted by the Bondholders' Com-

mittee and have authorized the Committee to carry such plan into execution. The time for the deposit of bonds with the Bondholders' Committee has been extended to July 15, 1935.

On April 17, 1935, three days before Francisco Building Corp., Ltd. filed its petition herein under Section 77B, counsel for the Bondholders' Committee were instructed to proceed with the plan of reorganization adopted by the Bondholders' Committee. "Medico-Dental Building Company of Los Angeles" was chosen as the name of the new corporation and the powers and capitalization of said corporation were determined by the Bondholders' Committee. The trustee and the cotrustee under the new indenture provided for in the Bondholders' Committee's plan of reorganization and the voting trustees under the new voting trust agreement were agreed upon. On April 18, 1935 the articles of incorporation of the new corporation provided for in the plan of reorganization adopted by the Bondholders' Committee were signed and acknowledged, and on April 22, 1935 such new corporation was incorporated and its articles filed with the California Secretary of State. On April 25, 1935 the Bondholders' Committee made a written offer to transfer to Medico-Dental Building Company of Los Angeles all deposited bonds in exchange for the issuance of bonds and stock in accordance with the plan of the Bondholders' Committee. This offer was accepted on May 1, 1935. On May 3, 1935 Medico-Dental Building Company of Los Angeles and the voting trustees under the voting trust agreement filed their applications with the Commissioner of Corporations of the State of California to issue and sell their securities. A public hearing upon these applications was held on June 10, 1935, upon notice to all persons to whom

it was proposed to issue such securities, and after such hearing said Commissioner of Corporations made his findings and conclusions wherein said Commissioner, among other things, found and concluded that the terms and conditions of the proposed issuance and exchange of securities under said plan of reorganization adopted by the Bondholders' Committee were fair, and said Commissioner issued his permits to Medico-Dental Building Company of Los Angeles and to said voting trustees authorizing them to issue and sell the securities provided for by the Bondholders' Committee's plan of reorganization, subject to the condition that no securities should be issued or sold unless and until an order is made by this Honorable Court vacating and setting aside its order of April 20, 1935 in so far as said order restrains sale by the trustee under the trust deed executed by Morgan Building Corporation and dated as of December 1, 1924, or modifying said order so as to permit sale by such trustee.

#### IX.

Petitioners are ready, willing and able to proceed with the plan of reorganization proposed by the Bondholders' Committee upon which the Committee has been working for the period of approximately one year and a copy of which is included in the registration statement attached hereto as Exhibit A.

WHEREFORE, petitioners pray:

1. That the debtor's proposed plan of reorganization be rejected and that an order be made by this Honorable Court that said plan is not confirmed.

That the order made by this Honorable Court under date of April 20, 1935 restraining the sale of the property described in the trust deed be vacated and set aside.

3. That the above entitled proceedings under Section 77B be dismissed.

4. Such other and further relief as to this Court may seem just.

H. H. COTTON, CHARLES C. IRWIN,  
JOHN TREANOR and J. B. VAN NUYS,  
as the Medical Center Building First Mortgage  
Bondholders' Committee.

By H. H. Cotton

Petitioners

O'MELVENY, TULLER & MYERS

And Homer I. Mitchell

Attorneys for Petitioners.

STATE OF CALIFORNIA )

: ss

COUNTY OF LOS ANGELES )

H. H. COTTON, being by me first duly sworn, deposes and says: that he is one of the petitioners in the above entitled action; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

(Seal)

H. H. Cotton

Subscribed and sworn to before me this 20 day of June, 1935.

CAROLINE E. TRACY

NOTARY PUBLIC in and for the County of Los  
Angeles, State of California



## EXHIBIT II-A

MEDICAL CENTER BUILDING  
REORGANIZATION PLAN.

Messrs. H. H. COTTON, CHARLES C. IRWIN, JOHN TREANOR and J. B. VAN NUYS have heretofore been constituted a First Mortgage Bondholders' Committee pursuant to deposit agreement, dated May 18, 1932, for the bonds secured by Medical Center Building, located at the northeast corner of Francisco and Eighth Streets, Los Angeles, California. This property is subject to a first trust deed and chattel mortgage, dated as of December 1, 1924, executed and delivered by Morgan Building Corporation to William K. Bowes, as trustee, (Leigh M. Battson being the present trustee) securing \$615,000.00 in principal amount of Six Per Cent First Mortgage Gold Bonds executed by said Morgan Building Corporation. There are now outstanding bonds in the aggregate principal amount of \$524,500.00.

Default has been made with respect to the payment of principal and interest, and a reorganization and refinancing of the property is necessary. Accordingly, the trustee under the first mortgage bond issue has served a notice of acceleration declaring all of said bonds due and payable, and the undersigned committee will request said trustee to sell said property pursuant to the terms of the trust deed and chattel mortgage securing the bonds now outstanding. It is unlikely that an adequate bid will be made at the sale by any outside interests, and it probably will be necessary that the first mortgage bondholders purchase the property at the trustee's sale in order to pro-

tect themselves. The committee is prepared to bid at the trustee's sale, and has adopted the following plan for the reorganization of the property:

## I.

In the absence of a satisfactory bid on the part of other persons, the committee intends to bid, or to cause its nominee or representative to bid, for all of said property at such trustee's sale for the benefit of the depositing bondholders.

In the event the committee or its nominee or representative shall acquire title to said property at such trustee's sale or in any other manner for the benefit of the depositing bondholders, such title to said property so acquired shall be conveyed and transferred to a new corporation to be organized under the laws of the State of California, or such other state as the committee may select, or at its option such title may be acquired by such new corporation directly at such trustee's sale. Such new corporation shall have such name, such powers and such authorized capitalization, represented by such number of shares of capital stock with such par value as may be designated by the committee.

## II.

1. The new corporation shall authorize and issue an issue of bonds (hereinafter referred to as the "new bonds") to be dated as of September 1, 1934 and to mature on September 1, 1949. Such new bonds shall be issued in a principal amount equal to the principal amount of the present bonds which shall have been deposited with the committee. Such new bonds shall bear interest at

the rate of five per cent (5%) per annum, such interest to be payable April 1 and October 1 of each year if and to the extent that the earnings for the semiannual period ended on the last day of February and August, respectively, immediately preceding such interest payment dates and available for the payment of interest from funds paid the cotrustee as hereafter provided shall suffice for such payment. Said new trust indenture may provide that distributions of interest to bondholders need be made only in amounts equal to one-half per cent (or some multiple thereof) of the principal amount of the outstanding bonds. Interest not earned and so available in any semiannual period shall not accumulate.

2. The new bonds shall be secured by a new trust indenture in the nature of a trust deed and/or mortgage and/or chattel mortgage upon all of the property to be acquired by the new corporation, subject only to the lien of taxes not delinquent, leases to tenants in possession, and other matters, if any, which shall be approved by the committee. Such new trust indenture shall be executed by the new corporation and shall designate such trustee as the committee shall select provided that if the trustee is an individual there shall also be a corporate cotrustee for the purpose, among other things, of authenticating and registering bonds and for the purpose of holding and disbursing funds. The trustee, if a corporation, or if not then the cotrustee, shall be Title Insurance and Trust Company or such other Los Angeles bank or trust company as may be designated by the committee. If the trustee is a corporation, all references hereinafter contained to the cotrustee shall be deemed references to the trustee. The trustee and cotrustee shall be entitled to reasonable payment for their respective services.

3. The new bonds shall not bear coupons but shall be registered both as to principal and interest, and payment shall be made by the cotrustee to the registered holders.

4. Said new trust indenture shall provide that there shall be deposited monthly with the cotrustee under said new trust indenture all of the cash receipts from the operation of said property remaining after:

(a) Disbursements for current operating expenses in connection with said property; provided, however, that there shall not be included in any such operating expenses any amounts on account of depreciation, obsolescence or amortization, that no unreasonable salaries or other unreasonable charges shall be allowed or paid; and provided further that compensation for managerial services shall not exceed five per cent (5%) of all of the cash receipts from the operation of said property unless such receipts are less than six thousand dollars (\$6,000.00) per month, in which case such compensation shall not exceed three hundred dollars (\$300.00) per month (the term "managerial services" above being intended to refer to all services, including those rendered by executive officers of the new corporation, in managing said property but not such services as are rendered by accountants, attorneys or by the general staff of employees);

(b) Disbursements for repairs, maintenance, improvements, alterations, replacements and renewals in connection with said property, except as the same may be paid from insurance or condemnation moneys; provided, however, that no such disbursements aggregating more than \$5,000.00 in any one year commencing September 1 shall be chargeable against or paid from such cash receipts

without the written approval of the trustee under said new trust indenture, and provided further that no disbursements for improvements, alterations, replacements and renewals aggregating more than \$2,500.00 in any one year commencing September 1 shall be so chargeable without such approval;

(c) Disbursements for the fees, charges and expenses of the trustee and cotrustee under said new trust indenture (not including acceptance, authentication and registration fees in connection with the original acceptance of the trust or the original issuance of said new bonds, which fees are to be paid as part of the reorganization expenses and from funds to be provided for that purpose) and compensation of the voting trustees under the voting trust hereafter mentioned and of their depository and agent and all other expenses of such voting trustees and of such voting trust and/or expenses in connection with the transfer of the stock of the new corporation;

(d) The replenishment of initial cash working capital of the new corporation, which working capital shall be used by the new corporation in connection with the operation of said property and applied solely to the payment of any items for which cash receipts may be disbursed in accordance with the foregoing provisions of this paragraph, in the event cash receipts shall be insufficient therefor, and/or, at the option of the new corporation, the same may be applied at any time or times to the payment of taxes, assessments and/or insurance premiums in connection with said property.

Said new trust indenture shall provide that the new corporation shall file with the trustee and cotrustee there-

under on or before the 15th day of each calendar month verified schedules and reports showing, for the preceding calendar month, the gross and net operating income from the trust property and also the cash receipts and disbursements in connection with said property, including the amount required for deposit with the cotrustee as aforesaid, and such other information as the trustee or cotrustee shall require; and that the new corporation shall file with the trustee and cotrustee, within fifteen (15) days after the end of each semiannual interest accrual period, similar schedules and reports, certified by public accountants satisfactory to the trustee and cotrustee under said new trust indenture, covering the operations for the preceding semiannual period. Such schedules and reports as may be rendered by public accountants as aforesaid shall be determinative in the event of conflict between the same and the monthly schedules and reports to be furnished by the new corporation. The trustee and cotrustee and/or their representatives shall have access to the books and records of said new corporation and of said property at any time or times for the purpose of making examination of the same, and such books and records and the schedules and reports above referred to shall be in such form and shall contain such data as may be required by the trustee and/or cotrustee.

5. Said new trust indenture shall provide that said funds, deposited with the cotrustee under said new trust indenture and applicable to each semiannual period from and after the date of the new bonds, shall be applied or set aside by the cotrustee in the following manner and order of priority:

(a) In the event specified amounts of such funds represent rental deposits or advance rentals according to the above mentioned schedules and reports, then such amounts shall be reserved by the cotrustee until the particular period in which the same shall be earned, whereupon such amounts shall be applied as provided below;

(b) In the event that the new corporation's cash working capital (referred to in subparagraph (d) of the paragraph numbered 4 hereof) shall be reduced below the amount initially provided by reason of the fact that in any month disbursements chargeable against cash receipts from the operations of said property as provided in subparagraphs (a), (b) and (c) of the paragraph numbered 4 hereof, shall exceed such cash receipts, or by reason of the application of said cash working capital or any part thereof to the payment of taxes, assessments and/or insurance premiums in connection with said property, then an amount not in excess of such deficit shall be returned by the cotrustee to the new corporation in order to replenish such cash working capital;

(c) To the creation of cash reserves for the payment by said cotrustee of taxes (including general taxes, income and franchise taxes), assessments and insurance in connection with said property;

(d) To the payment of reorganization expenses (as herein defined) and/or notes of the new corporation, payable solely from funds applied by the cotrustee in accordance with this subparagraph (d), executed in payment of such expenses, until such expenses and/or notes shall be fully paid;

(e) To the payment (semiannually) of interest on the new bonds at the rate of two per cent (2%) per annum;

(f) The remainder of such funds shall be applied as follows until the interest received by bondholders equals five per cent (5%) per annum;

(aa) One-half to bond retirement according to the procedure outlined below;

(bb) One-half for additional interest to the bondholders;

(g) The remainder of such funds shall be applied as follows:

(aa) Two-thirds to bond retirement according to the procedure outlined below;

(bb) One-third shall be returned to the new corporation to be used for any corporate purposes, including dividends on stock of the new corporation;

provided, however, that if any note or notes of the new corporation, whether secured or unsecured, are executed by the new corporation to obtain funds for the payment of reorganization expenses (unless such note or notes are payable solely from funds applied by the cotrustee in accordance with subparagraph (d) above) then, notwithstanding anything to the contrary contained in this paragraph numbered 5, the cotrustee shall apply to the payment of interest and/or principal of such note or notes (and any renewals or extensions thereof) and/or to the creation of reserves to be used by the cotrustee for such payment, such sums out of the funds deposited with it as aforesaid as the new corporation from time to time shall direct and the trustee shall approve, in which case the cotrustee shall apply the remainder of such funds in



the manner and order of priority specified in subparagraphs (a) to (g), both inclusive, of this paragraph numbered 5.

6. Said new trust indenture shall further provide that the new bonds shall be subject to redemption in whole or in part upon payment of the principal thereof and accrued interest thereon to the date fixed for redemption but without the payment of any premium, all in accordance with the terms and provisions to be contained in the new trust indenture. In retiring new bonds from money paid the cotrustee, the cotrustee shall purchase new bonds in the open market, or shall acquire such bonds by tender to the cotrustee or shall call new bonds for redemption.

7. The new trust indenture shall contain such provisions in respect to insurance as the committee shall specify and shall provide that such insurance shall be placed by such agency as may be designated and/or approved by the trustee under said trust indenture.

8. The new trust indenture shall provide that if the trustee at any time shall notify the new corporation that in his opinion said property is not being managed, operated or maintained in the best interests of the bondholders and shall specify in writing changes which the trustee shall desire, the new corporation shall within thirty (30) days either: (a) make such changes in such management, operation or maintenance as shall satisfy the trustee or (b) submit to arbitration the question whether in the best interests of the bondholders changes should be made in such management, operation or maintenance (one arbitrator to be appointed by the trustee, one by the new corporation, and the third by the two so appointed or, in the

absence of such appointment within ten (10) days, then by the cotrustee) and, if a majority of such arbitrators decide such question in the affirmative, within thirty (30) days thereafter make such changes as such majority shall prescribe. The expense of such arbitration shall be deemed a current operating expense in connection with said property.

9. The new trust indenture shall provide that with the consent of the holders of seventy-five per cent (75%) in principal amount of new bonds then outstanding:

(a) The new indenture may be released and the new bonds satisfied (but only with the written consent of the Commissioner of Corporations of the State of California so long as there is such a commissioner) upon payment or delivery to the cotrustee for the benefit of the holders of all the new bonds then outstanding, of a consideration (which may be money, securities or any other consideration), which consideration may be less than the principal amount of such new bonds then outstanding;

(b) With the consent of the new corporation, the trustee and cotrustee, any of the terms and provisions of the new indenture or the new bonds may be altered, eliminated or supplemented; or

(c) The new indenture may be subordinated to a new mortgage or trust deed or other encumbrance for such purposes and in such amount as such percentage of the holders of the new bonds shall approve.

10. The new indenture shall also provide that the trustee shall be entitled to possession of the trust estate if the interest paid to holders of new bonds then outstanding in the last two semiannual distributions shall not have

aggregated three per cent (3%) upon the principal of such new bonds.

11. The new bonds and the new trust indenture shall otherwise be in such form and shall contain such terms, provisions and covenants, not inconsistent with the terms hereof, as the committee and its counsel may determine.

### III.

An estimate of the reorganization expenses (which term, wherever used in this plan, includes, and is hereby defined as including, expenses and requirements in connection with the trustee's sale and purchasing said property at such sale, repayment of any obligations of the committee, provision for working capital for the new corporation, expenses and compensation of the committee, and all other requirements in connection with the consummation of the reorganization) will be subsequently prepared by the committee and filed with its depositaries. It is anticipated that all such expenses and requirements will be paid:

(a) From cash held by the depositary and/or trustee under the present indenture and distributable upon the deposited bonds;

(b) From cash which the cotrustee under the new indenture may apply pursuant to subparagraph (d) of the paragraph numbered 5 of Article II above, to the payment of reorganization expenses and/or by notes of the new corporation payable, without interest, solely from cash which the cotrustee may apply pursuant to said subparagraph (d); and/or

(c) From funds obtained by the new corporation by its note or notes, which may be either unsecured or secured (in priority to the indenture securing the new bonds) by such property, real or personal or both, of the new corporation as the committee shall authorize, which note or notes and the instrument or instruments, if any, securing the same shall be in such form and shall contain such terms and conditions as the committee shall authorize.

#### IV.

1. The depositing first mortgage bondholders, that is to say, holders of certificates of deposit issued by the committee's depositaries in exchange for the present outstanding bonds and who assent to this plan, shall receive new bonds in an aggregate principal amount equal to the principal amount of their deposited bonds.

2. All of the issued stock of the new corporation shall be issued to three voting trustees, pursuant to the provisions of a voting trust agreement, and participating certificates representing such stock shall be distributed to said depositing first mortgage bondholders on the basis of a participating certificate representing one share of stock of the new corporation for each deposited bond of the principal amount of \$1,000.00, one-half share for each deposited bond of the principal amount of \$500.00, and one-tenth share for each deposited bond of the principal amount of \$100.00. The voting trust agreement shall endure for a period of twenty-one (21) years, unless earlier terminated (a) by a majority of the voting trustees or (b) by instruments in writing executed by the holders of participating certificates representing fifty per cent (50%) or more in amount of the issued capital stock

of the new corporation, together with (so long as any new bonds are outstanding) like instruments executed by the holders of fifty per cent (50%) or more in principal amount of the new bonds then outstanding.

The initial voting trustees shall be designated by the committee. The voting trust agreement shall provide that at any time one of the voting trustees may be removed by the other two voting trustees, and that at any time any one or more of the voting trustees may be removed by instruments in writing executed by the holders of participating certificates representing fifty per cent (50%) or more in amount of the issued capital stock of the new corporation, together with (so long as any new bonds are outstanding) like instruments executed by the holders of fifty per cent (50%) or more in principal amount of the new bonds then outstanding; and also that in the event of the death, resignation, incapacity to act, or removal of any trustee or trustees, a successor or successors may be appointed by the remaining trustees or trustee, but that in the event no such appointment is made within thirty (30) days from and after the death, resignation, incapacity to act, or removal of any trustee, a successor may be appointed by instruments in writing executed by the holders of participating certificates representing fifty per cent (50%) or more in amount of the issued capital stock of the new corporation, together with (so long as any new bonds are outstanding) like instruments executed by the holders of fifty per cent (50%) or more in principal amount of the new bonds then outstanding.

The voting trustees shall be entitled to reasonable compensation for their services, but for their usual and ordi-

nary services the compensation of each voting trustee shall not exceed \$50.00 per month, including fees, if any, which the voting trustees may receive as directors of the new corporation. The depository and agent of the voting trustees shall be Title Insurance and Trust Company, or such other Los Angeles bank or trust company as may be designated by the voting trustees, and such depository and agent shall be entitled to reasonable compensation. The compensation of the voting trustees and of their depository and agent, and all other expenses of the voting trustees and of the voting trust, shall be payable by the new corporation from the operating receipts of its property. If unpaid, such compensation and expenses shall constitute a lien on the stock issued to the voting trustees.

The voting trustees shall possess, and in their discretion shall be entitled to exercise, all rights and powers of the holders of the outstanding stock of the new corporation; provided, however, that in the event the voting trustees shall propose (1) to sell the property of the new corporation as a whole or the stock deposited with them pursuant to such voting trust agreement and/or (2) to lease (except with the prior approval of the committee), transfer, convey, mortgage or encumber the property of the new corporation as a whole, such proposal shall be first mailed to the holders of the participating certificates and of all new bonds, if any, then outstanding; and in the event within twenty (20) days thereafter written dissents to such proposal shall be filed with the depository and agent executed by the holders of participating certificates representing fifty per cent (50%) or more in amount of the issued capital stock of the new corporation, together with (so long as any new bonds are outstanding) like

dissents executed by the holders of fifty per cent (50%) or more in principal amount of the new bonds then outstanding, then in such case the voting trustees shall not have the right to consummate the proposal so submitted. The voting trustees may in their discretion, but shall not be required to, submit in like manner and with like effect any proposal which they shall deem substantially to affect the rights or interests of the new corporation or the holders of securities issued by it.

The voting trust agreement may be amended by resolution of all of the trustees, but if in their opinion (which shall be conclusive) such amendment will materially or substantially affect the rights of the holders of participating certificates, the trustees shall mail notice of such proposed amendment to the holders of the participating certificates and of all new bonds, if any, then outstanding, and such amendment shall not become effective if within (20) days thereafter written dissents to such approval shall be filed with the depositary and agent executed by the holders of participating certificates representing fifty per cent (50%) or more in amount of the issued capital stock of the new corporation, together with (so long as any new bonds are outstanding) like dissents executed by the holders of fifty per cent (50%) or more in principal amount of the new bonds then outstanding.

The voting trust agreement shall be in such form and shall contain such terms, provisions and covenants, not inconsistent with the terms hereof, as the committee may determine.

## V.

The new corporation shall indemnify the present trustee and his predecessors and successors in trust against all loss, costs, liability and expense by reason of his management, operation and/or sale of the trust property, including any income tax liability or any liability for non-payment of taxes of any kind or character whatsoever, and shall assume and agree to pay and perform all contracts and obligations of the trustee, his predecessors or successors in trust, in connection with the management and operation of said property and remaining unpaid or unperformed. The new corporation shall also indemnify the committee against any liabilities and obligations of the committee heretofore or hereafter incurred and also against any liability of the committee or the bondholders for taxes, assessments or other governmental charges which may be levied or assessed against the committee or the bondholders in connection with the reorganization or issuance of the new securities. The new corporation may use cash receipts from the operation of said property for its indemnities mentioned in this Article V, notwithstanding anything to the contrary contained in this plan.

## VI.

This plan of reorganization is conditioned upon the acquisition of said property by the committee or its nominee or representative, and the committee shall have full and absolute discretion to determine the amount which



the committee, or its nominee or representative, shall bid at the trustee's sale.

This plan of reorganization is subject to the approval of any public authorities having jurisdiction over the same.

## VII.

This shall be deemed a plan of reorganization within the provisions of the deposit agreement hereinabove mentioned, which deposit agreement is hereby referred to and made a part hereof. In order to evidence its adoption of the foregoing plan of reorganization, the committee has caused said plan to be executed by its chairman or secretary, pursuant to resolution of the committee at a meeting thereof duly called and held.

Dated June 26, 1934.

MEDICAL CENTER BUILDING FIRST  
MORTGAGE BONDHOLDERS' COMMITTEE,

By WILFRED N. HOWARD,

Its Secretary.

\* \* \* \* \*

[Endorsed]: Received copy of the within petition this 25 day of June, 1935 Elbert E. Hensley, attorney for Francisco Bldg. Corp. Ltd. Filed R. S. Zimmerman Clerk at 52 min. past 11 o'clock Jun. 25, 1935 A. M. By Theodore Hocke Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER PERMITTING THE FILING OF AMEND-  
MENT TO PROPOSED PLAN OF REORGAN-  
IZATION.

Upon the application of the Francisco Building Corp. Ltd., a corporation, petitioning debtor herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Francisco Building Corp. Ltd., a corporation, be and it hereby is permitted and allowed to file herein its amendments to the proposed Plan *or* Reorganization on file herein; that the amendments so set forth are to be effective as to the date of the filing of the proposed Plan of Reorganization, and as of the date of the hearing thereon; the said petitioning debtor having heretofore and at the time of the hearing on the proposed plan offered to amend its proposed plan as is in the amendments set forth.

DONE IN OPEN COURT this 29 day of July, 1935.

Wm. P. James

Judge of the United States District Court.

[Endorsed]: Filed R. S. Zimmerman Clerk at 17 min past 1 o'clock Jun. 29, 1935 P. M. By F. Betz Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

AMENDMENT TO PROPOSED PLAN OF  
REORGANIZATION.

Comes now Francisco Building Corp. Ltd., a corporation, the petitioning debtor, and files the following amendments to its proposed plan of reorganization, which said amendments were offered by the attorneys for petitioner at the hearing on the proposed plan of reorganization had on the 1st day of July, 1935, and which said amendments are to be effective as of the date of the filing of the proposed plan, and as of the date of the hearing thereon:

I.

That Article III, paragraph 1 thereof be amended as follows:

By deleting therefrom the following sentence (page 5, lines 10 and 11):

“Such new bonds shall be issued in the principal amount of \$340,925.00.”

And amending the same by inserting in lieu of the foregoing sentence the following:

“Such new bonds shall be issued in the principal amount of \$524,500.00.”

II.

That Article IV thereof be amended as follows:

By deleting from the said Article, wherever found the words and figures “Sixty-five per cent (65%)” (found at page 10, lines 14 and 24, page 11, line 1).

By amending the same by inserting in lieu of the aforesaid words and figures wherever found in the said Article the following words and figures:

“One Hundred per cent (100%)” (To be inserted at lines 14 and 24, page 10 and line 1, page 11 of the proposed Plan.)

### III.

That Article III, Paragraph 6, section (g) be amended as follows:

By deleting therefrom the following sections:

“(g) The remainder of such funds shall be applied as follows:

“The whole thereof shall be returned to the debtor corporation to be used for any corporate purposes, including dividends.”

And by amending the same by inserting in lieu of the foregoing section the following new section:

“(g) The remainder of such funds shall be applied as follows:

“The whole thereof to bond retirement according to the procedure outlined below.”

FRANCISCO BUILDING CORP. LTD.

BY John H. Klenke  
Attorneys for Debtor.

[Endorsed]: Filed R. S. Zimmerman Clerk at 18 min. past 1 o'clock Jun. 29, 1935 P. M. By F. Betz, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552-J. In Bankruptcy

STATEMENT OF EVIDENCE AND PROCEEDINGS ON HEARING OF PROPOSED PLAN OF REORGANIZATION FILED UNDER SEC. 77 B OF THE ACTS OF BANKRUPTCY.

Now comes the petitioning debtor herein, Francisco Building Corp. Ltd., a corporation, and files herein the following statement of the Evidence and Proceedings had at the hearing on the proposed plan of reorganization filed herein pursuant to and in compliance with order of Court made on or about the 20th day of April, 1935, and under and pursuant to the provisions of Sec. 77 B of the Acts of Bankruptcy as Amended.

I.

On the 20th day of April, 1935, the petitioning debtor, Francisco Building Corporation, duly filed herein it's Petition for Reorganization under and pursuant to the provisions of Sec. 77 B of the Acts of Bankruptcy as Amended. That at the said time this Honorable Court duly made its order approving the said petition and permitting and requiring the debtor herein to file it's proposed plan of reorganization on or before the 20th day of May, 1935. That the allegations and matters set forth in the said petition for reorganization and order made thereon will more fully appear from the records, pleadings and files herein, reference to which are hereby made as though fully and completely herein set forth at length.

## II.

That thereafter, and on the 20th day of May, 1935, the said petitioning debtor, Francisco Building Corp. Ltd. did file herein it's Proposed Plan of Reorganization, and this Honorable Court did, on said date, make it's order setting the said matter for hearing on the 1st day of July, 1935, and requiring publication of the said order once a week for two consecutive weeks, and requiring service of a copy of the said proposed plan of reorganization and of the said order upon the trustee in possession, Leigh M. Battson, and upon the Bond Holders' Protective Committee, consisting of H. H. Cotton, Charles C. Irwin, John Treanor and J. B. Van Nuys. That the terms, conditions, provisions and matters set forth in the said Proposed Plan of Reorganization, and of the said Order will more fully appear from the records, pleadings and files herein, reference to which is hereby made as though fully and completely herein set forth at length.

## III.

That thereafter, and pursuant to the terms of the aforesaid Order of Court of May 20th, 1935, the aforesaid Trustee and the aforesaid Bond Holders' Protective Committee, having been served with a copy of the proposed plan of reorganization and Order, and on or about June 25th, 1935, duly served and filed herein their Objections and Exceptions of Leigh M. Battson, as trustee, and of the Bond Holders' Committee to Debtor's Proposed Plan of Reorganization and Petition of Bond Holders' Committee in Support of Its Objections and Exceptions to Debtor's Proposed Plan of Reorganization and for an Order (1) Rejecting said Plan, (2) Vacating and setting

aside the Order Restraining Sale, and (3) Dismissing Proceedings under Sec. 77 B. That the said objections and Exceptions and the allegations, matters and things set forth in the said Petition will more fully appear from the records, pleadings and files herein, reference to which are hereby made as though fully and completely herein set forth at length.

#### IV.

Thereafter, and on the 1st day of July, 1935, at the hour of 2:00 o'clock P. M. thereof, the aforesaid Proposed Plan of Reorganization duly and regularly came on for hearing; the petitioning debtor being represented by its counsel Messrs. Elbert E. Hensley and John H. Klenke, and the trustee and Bond Holders' Committee being represented by their counsel, Messrs. O'Melveny, Tuller & Myers and Homer I. Mitchel, Esq. At the hearing, and upon application of Elbert E. Hensley, and after receiving leave of Court to do so, the debtor herein duly served upon counsel for the said trustee and Bond Holders' Committee, and filed herein, its Amendment to Petition for Reorganizaiton. The allegations and matters set forth in the aforesaid Amendment to the Petition for Reorganization, will more fully appear from the records, pleadings and files herein, reference to which is hereby made as though fully and completely set forth herein at length. The matter was presented to the Court by John H. Klenke, Esq. on behalf of the debtor, who discussed and argued the matters set forth in the Petition for Reorganization and Amendment thereto, analyzed the proposed plan, and orally presented to the Court certain amendments thereto to meet and overcome certain of the

objections and exceptions of the trustee and bondholder's Committee, leave being given to subsequently file the same effective as of the date of the filing of the plan and of the date of the hearing thereon. On behalf of the trustee and Bondholders' Committee the objections and exceptions to the proposed plan were presented to the Court by Homer I. Mitchell, Esq. Elbert E. Hensley, Esq. on behalf of the debtor, replied to Homer I. Mitchell. On behalf of the debtor John H. Klenke, Esq. concluded the hearing. The matter was thereupon taken under submission by the Court.

#### IV.

Thereafter this Honorable Court duly made the following memorandum of decision:

#### “(MINUTE ORDER)”

|                          |   |                |
|--------------------------|---|----------------|
| In the Matter of         | ) |                |
| FRANCISCO BUILDING CORP. | ) |                |
| LTD., A CORPORATION,     | ) | No. 25552-Bank |
|                          | ) |                |
| Debtor.                  | ) |                |
|                          | ) |                |

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The debtor herein having, after petition in that behalf duly filed, presented a plan of reorganization for the approval of the Court; and bondholders representing ownership of substantially all of the issued and outstanding bonds having objected to the approval or acceptance of the proposed plan; and the Court having heard the matter of said petition and the objections so made thereto, now determine that the objections of the bondholders should be sustained and the proposed plan of the debtor not ap-



proved. IT IS SO ORDERED. The order restraining foreclosure proposed to be made on behalf of the bondholding interest is dissolved. The petition of the debtor will be dismissed by order hereafter entered unless the debtor has other property than that subject to the bondholders' lien which may be liquidated in this proceeding. An exception is noted in favor of the debtor petitioner."

## V.

Thereafter, on or about the 29th day of July, 1935, the Honorable William P. James, Trial Judge hereof, duly made his order rejecting debtor's proposed plan of reorganization, and vacating and setting aside the restraining order; that the said order will more fully appear from the records, pleadings and files herein, reference to which are hereby made as though fully and completely herein set forth at length. That on the said 29th day of July, 1935, the Honorable William P. James, Judge of the United States District Court, upon the application of petitioning debtor herein, permitted and allowed said debtor to file its written amendments to the proposed plan of reorganization, said amendments so set forth to be effective as of the date of the filing of the proposed plan of reorganization and as of the date of the hearing thereof; the petitioning debtor having heretofore and at the time of the hearing offered to amend its proposed plan as in said amendments set forth. That pursuant to said order, and on the 29th day of July, 1935, petitioning debtor herein filed its amendments to proposed plan of reorganization; that the terms and provisions of the said order and the amendments to the proposed plan will more fully appear on the records, pleadings and files herein, reference to

which is hereby made as though fully and completely herein set forth at length.

## VI.

Thereafter, and within ten (10) days from the date of making and entry of the aforesaid order rejecting debtor's proposed plan of reorganization, and vacating and setting aside restraining order, and in the regular term of the above entitled Court, the petitioning debtor herein duly and regularly served upon opposing counsel and filed herein its statement of the evidence and proceedings had upon the proposed plan *or* reorganization, and all matters to which the same pertain and relate, which said statement was filed pursuant to and in compliance with Equity rules 75, 76 and 77 (28 U. S. C. A. page 32 et seq, following paragraph 723).

WHEREFORE, petitioning debtor herein prays that the foregoing statement may be settled and allowed as correct as truly and properly setting forth a statement of the evidence and proceedings had upon the hearing of the proposed plan of reorganization and all matters to which the same pertained or related and that the same presents a full, true and correct statement of the evidence and proceedings herein had and that upon a date to be set by the Court, the same be so settled and allowed and order made that the said statement was filed pursuant to and in compliance with Equity rules 75, 76 and 77.

FRANCISCO BUILDING CORP. LTD.

BY John H. Klenke  
Elbert E. Hensley  
Its Attorneys & Solicitors.

The foregoing statement of the evidence and proceedings on the hearing of the proposed plan of reorganization was prepared, served and lodged within the time allowed by law, and thereafter and upon due notice thereof, duly and regularly given to Messrs. O'Melveny, Tuller & Myers and Homer I. Mitchel, Esq., attorneys for the trustee and Bondholder's Committees, the said statement of evidence and proceedings came on for hearing on Tuesday, the 3rd day of September, 1935; debtor appellant herein being then and there represented by Elbert E. Hensley, Esq. and John H. Klenke, Esq., and the trustee and Bondholder's Committee being then and there represented by Homer I. Mitchel, Esq.

IT IS HEREBY ORDERED, that the foregoing statement of evidence and proceedings on the hearing of the proposed plan of reorganization correctly sets forth all of the proceedings had on the hearing of the proposed plan of reorganization and all of the evidence offered at such hearing of the proposed plan of reorganization and the said statement is hereby settled, and allowed as correct.

Done in Open Court this 18 day of September, 1935.

Wm. P. James

Judge of the United States District Court.

[Endorsed]: Lodged, R. S. Zimmerman, Clerk, at 22 min. past 3 o'clock, Aug 7, 1935 P M, By F. Betz, Deputy Clerk, Filed R. S. Zimmerman, Clerk at 21 min past 4 o'clock, Sept. 18, 1935 P. M. By F. Betz, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

In Proceedings for the Reorganization of a Corporation  
No. 25552-J.

ORDER REJECTING DEBTOR'S PROPOSED  
PLAN OF REORGANIZATION AND VACAT-  
ING AND SETTING ASIDE RESTRAINING  
ORDER.

This matter came on for hearing the 1st day of July, 1935, on the written objections and exceptions of Leigh M. Battson, as Trustee, and of Bondholders' Committee to Debtor's proposed plan of reorganization, and the petition of Bondholders' Committee in support of its objections and exceptions to Debtor's proposed plan of reorganization and for an order (1) rejecting said plan; (2) vacating and setting aside the order restraining sale; and (3) dismissing proceedings under Section 77B of the Bankruptcy Act of 1898 as amended.

The Debtor was represented at the hearing by its counsel, Elbert E. Hensley, Esq.; and Leigh M. Battson, Trustee, and Bondholders' Committee were represented by their counsel, Messrs. O'Melveny, Tuller & Myers and Homer I. Mitchell, Esq.

The court having heard the arguments of counsel, and having read and considered the pleadings and other documents filed herein, and being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND  
DECREED:

1. That the objections and exceptions of Leigh M. Battson, Trustee, and of the Bondholders' Committee to

the plan of reorganization proposed by the Debtor be, and they are hereby sustained; and that said plan of reorganization proposed by the Debtor be, and it is hereby disapproved and rejected.

2. That the order of this court under date of April 20, 1935 be, and the same is hereby, vacated and set aside in so far as such order restrains sale by the Trustee under that certain trust indenture executed by Morgan Building Corporation to William K. Bowes, Trustee, and dated as of December 1, 1924, securing Medical Center Building Six Per Cent First Mortgage Gold Bonds, dated as of December 1, 1924.

3. That this court hereby reserves jurisdiction to make such further order or orders dismissing the proceedings herein, and for such other purposes, not inconsistent with paragraphs numbered 1 and 2 above, as to this court may seem proper in exercising the powers conferred by the provisions of Section 77B of the Bankruptcy Act of 1898 as amended.

4. An exception is noted in favor of the Debtor.

Dated July 29th, 1935.

Wm P James.

Judge.

Approved as to form as provided in Rule 44.

Elbert E. Hensley.

Attorney for Francisco Building Corp. Ltd., Debtor.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 59 min past 1 o'clock Jul. 29, 1935 P. M. By F. Betz, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF CALI-  
FORNIA CENTRAL DIVISION.

|                           |   |               |
|---------------------------|---|---------------|
| In the Matter of          | ) | No. 25552-J   |
|                           | ) | In Bankruptcy |
| FRANCISCO BUILDING CORP., | ) |               |
| LTD., a corporation,      | ) | PETITION      |
|                           | ) | FOR           |
| Debtor.                   | ) | APPEAL.       |
|                           | ) |               |

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TO THE HONORABLE WILLIAM P. JAMES,  
UNITED STATES DISTRICT JUDGE:

Francisco Building Corporation, Ltd., a corporation, the petitioner herein, considering itself aggrieved by that certain order made on these proceedings on the 29th day of July, 1935, by the Honorable William P. James, District Judge, sustaining the objections and exceptions of Leigh M. Battson, trustee and of the Bond Holders' Committee, to the plan of reorganization proposed by your petitioner herein as the debtor, and disapproving and rejecting the said plan of reorganization proposed by your petitioner herein, the debtor, and vacating and setting aside a previous order made by this Honorable Court under date of April 20, 1935, restraining the sale by Leigh M. Battson, as trustee, of that certain trust indenture executed by the Morgan Building Corporation to William K. Bowes, trustee, dated as of December 1, 1924, securing Medical Center Building Six Per Cent First Mortgage Gold Bonds dated as of December 1, 1924, DOES HEREBY APPEAL from such order or orders to the

United States Circuit Court of Appeals of the 9th Circuit, for the reasons specified in the Assignment of Errors which is filed simultaneously herewith, and prays that this appeal may be allowed; that a citation be issued directed to Leigh M. Battson as trustee, H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys, as the Medical Center Building First Mortgage Bond Holders' Committee, commanding them, and each of them, to appear before the said Circuit Court of Appeals to do and receive what may appertain to justice to be done in the premises; and that a transcript of the records, papers, proceedings, arguments, offers and stipulations upon which said order is based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit.

DATED: This 26 day of August, 1935.

John H. Klenke  
Attorney for Debtor, Appellant.

The foregoing appeal is hereby allowed this 26th day of August, 1935. Petitioner to file bond in sum of \$250.00 subject to being increased by Judge James.

Paul J. McCormick  
UNITED STATES DISTRICT JUDGE.

Dated Aug. 26, 1935

It is so ordered

Wm. P. James  
U. S. Dist. Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 13 min past 3 o'clock, Aug. 27, 1935 A M By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552-J In Bankruptcy

ASSIGNMENT OF ERRORS ON APPEAL.

Now comes Francisco Building Corp. Ltd., a corporation, appellant, and files this, its assignment of errors, complaining that the Honorable trial Court, in sustaining the objections and exceptions to the proposed plan of reorganization, and in rejecting the same, erred as follows:

I.

That the said order rejecting debtor's proposed plan of reorganization and vacating and setting aside restraining order, and dismissing these proceedings, was not in accordance with the law.

II.

That the Court, in making said order, in effect held that section 77 B of the Bankruptcy Act, and particularly subdivision (b) clause (5) thereof was invalid and unconstitutional and that it deprived bond holders and/or creditors of substantive rights and would constitute the taking of property without due process of law in violation of the United States Constitution.

III.

That the Court, in making said order, in effect held that under the provisions of section 77 B of the Bankruptcy Act any plan of reorganization proposed thereunder could only become effective upon its acceptance in writing by at least two-thirds (2/3) in amount of the creditors of such petitioning debtor.



## IV.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein proposed to scale down the principal amount of the outstanding bonds from \$524,000.00 to \$340,900.00; that such holding is against the evidence and the terms and provisions of the said plan as amended, for the attorneys for the petitioning debtor stated in open Court at the time of the hearing on the proposed plan that they were willing to and would amend the said proposed plan (Art. III, Para. 1 and Art. IV thereof) in order that there would be no scaling down of the principal amount of outstanding bonds and that the old and outstanding issue of bonds should be substituted for new issue of bonds dollar for dollar; that pursuant to said statement and under order of Court, such amendments to the proposed plan were, in writing, filed herein, effective as of the date of the filing of the proposed plan of reorganization, and effective as of the date of the hearing thereon.

## V.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein, whereby the bond holders were deprived of interest on the bonds accruing and unpaid as of July 1, 1935, was invalid and unconstitutional and would constitute the taking of property without due process of law, in violation of the United States Constitution; and that any provision or provisions of the Acts of Bankruptcy which allowed or permitted the deprivation of accrued interest unpaid would be invalid and unconstitutional and would constitute the taking of property without due process of law in violation

of the United States Constitution, and that a Court of Equity or of Bankruptcy had no power, right or authority to deprive creditors or lien holders of accrued interest on their claims under any plan of reorganization.

## VI.

That the Court, in making said order, in effect held that the proposed plan of the petitioning debtor proposed to use funds belonging to the bond holders for the purpose of paying all expenses of the reorganization, which said funds have been collected by Leigh M. Battson, as trustee, under the terms of the trust deed and chattel mortgage executed for the purpose of securing the said bonds; that such holding is against the evidence in that the undisputed facts show that the trustee is holding in an Owners Special Account belonging to the petitioning debtor herein assets in the sum of \$7,092.65, which it was proposed to use as well as the sum of \$28,821.99 in the hands of the trustee; and furthermore, that the Court, in making such order, in effect held that section 77B of the Bankruptcy Act, which provides that funds in the hands of a trustee may be used for reorganization purposes, was invalid and unconstitutional, and that it would result in the deprivation of substantive rights to creditors and would constitute the taking of property without due process of law, in violation of the United States Constitution.

## VII.

That the Court, in making said order, in effect held that the proposed plan deprived the bond holders of their right to retain the lien until the indebtedness secured thereby was paid and thereby in effect held that the provisions of the Acts of Bankruptcy, and particularly sec-

tion 77B thereof, allowing and permitting such deprivation and depriving creditors of their right to retain the lien until the indebtedness thereby secured is paid, is invalid and unconstitutional and that it would result in the deprivation to creditors of substantive rights and would constitute the taking of property without due process of law in violation of the United States Constitution.

### VIII.

That the Court, in making said order, in effect held that the proposed plan of the debtor proposes to deprive bond holders of the right to realize upon the security by a sale conducted by the trustee appointed in the trust indenture or by a judicial public sale, and thereby in effect held that the provisions of the Acts of Bankruptcy, and particularly of section 77B thereof, which authorize such procedure and such deprivation, are invalid and unconstitutional and would result in the deprivation to creditors of substantive rights and would constitute the taking of property without due process of law in violation of the United States Constitution.

### IX.

The Court in making such order in effect held that the proposed plan of the debtor proposes to deprive the bond holders of the right to determine when a sale of the security conducted by the trustee, appointed in the trust indenture, or by a judicial public sale of the security, should be held, subject only to the discretion of a Court of Equity, and in effect held that a Court of Equity has no such right or discretion, and further thereby in effect held that the provision of the Acts of Bankruptcy, and particularly section 77B thereof which would authorize such procedure

and such deprivation are invalid and unconstitutional and would result in the deprivation to creditors of substantive rights and would constitute the taking of property without due process of law in violation of the United States Constitution.

## X.

That the Court, in making said order, in effect held that the proposed plan proposes to deprive the bond holders of the right to protect their interests in the property by bidding at such sale, whenever held, and thus to insure having the mortgaged property devoted primarily to the satisfaction of the debt whether through the receipt of the proceeds of such sale or by the taking of the property itself, and thereby in effect held that the provisions of the Acts of Bankruptcy, and particularly of section 77B thereof, which authorizes such procedure and such deprivation, are invalid and unconstitutional and would result in the deprivation of creditors or bond holders of substantive rights and would constitute the taking of property without due process of law, in violation of the United States Constitution.

## XI.

The Court, in making said order, in effect held that the proposed plan proposes to deprive the bond holders of the right to have Leigh M. Battson, as trustee, or the trustee named in the trust deed and chattel mortgage, control the mortgaged property during the period of default and to have the rents and proceeds collected by said trustee sequestered for the benefit of the bond holders, and thereby in effect held that the provisions of the Acts of Bankruptcy,

and particularly section 77B thereof, which authorizes such procedure and such deprivation, are invalid and unconstitutional and would result in the deprivation of creditors or bond holders of substantive rights and would constitute the taking of property without due process of law, in violation of the United States Constitution.

## XII.

The Court, in making said order, in effect held that the debtor's proposed plan of reorganization did not adequately protect the bond holders for the realization by them of their interests; that such holding is against the evidence in that the said proposed plan is equitable and proposes that the bond holders, who were the only creditors of the petitioning debtor, should retain all of the equities or lien rights which they previously had on the debtor's property as an adequate protection for the realization by them of their interests, there being no change in the security of their bonds or of the relative position of the bond holders.

## XIII.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein did not adequately protect or provide for the interests of the bond holders because under the provisions of the said plan when the earnings of the property were low, the bond holders would receive only a minimum interest of 2%, and in periods when earnings were high, all earnings in excess of 8% per annum of the principal amount of the outstanding proposed new issue of bonds (5% of which, if earned, being required to be paid as interest, and

3% of which, if earned, to be required to be paid on the principal) would go to the stockholders of the petitioning debtor; that such holding is against the evidence and the terms and provisions of the said plan as amended, for the attorneys for the petitioning debtor stated in open Court at the time of the hearing on the proposed plan that they were willing to and would amend the said proposed plan (Art. III, Para. 6, sec. (g) thereof) in order that any and all funds received over and above the immediate operating expenses and preferred expenditures, as set forth in the proposed plan (Art. III, sections 4 and 6 thereof) would go to and be used for the payment of interest and retirement of the principal on the proposed new issue of bonds; no part of such funds to be returned to the debtor corporation for corporate purposes, including the payment of dividends. That pursuant to the said statement and of order of Court, such amendments to the proposed plan were, in writing, filed herein effective as of the date of the filing of the proposed plan of reorganization, and effective as of the date of the hearing thereon.

#### XIV.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein did not adequately protect or provide for the interests of the bond holders, and that under the provisions of the said proposed plan the maximum amount of the principal sum of the new issue of bonds which is required to be retired out of the income is 3% per year, or approximately 45% over the entire fifteen (15) year term of the proposed new bonds, thereby resulting in 55% of the principal amount of the proposed new issue of bonds being unretired at the maturity date thereof; the proposed

plan requiring that 2% earned be applied to the interest, the succeeding 6% to be divided equally, 3% to interest and 3% to principal retirement, and if the succeeding 6% should not be earned, whatever, if anything, is earned on account of it, to be divided equally between payment of principal and interest; the extra 3% interest payments being noncumulative; and that if, during the said years, the earnings would be insufficient to pay anything on account of retirement of principal, and if, during other years, the earnings would be more than adequate for such purpose, then during such other years the debtor would be allowed or permitted to have an interest in the excess, irrespective of the earnings; and that the proposed plan did not require the retirement of more than 45% of the bonds prior to maturity; that such holding is against the evidence and the terms and provisions of the said plan as amended, for the attorneys for the petitioning debtor herein stated in open Court at the time of the hearing on the proposed plan that they were willing to and would amend the said proposed plan (Art. III, Para. 6, sec. (g) thereof) in order to take care of said objection in its entirety and in order that all of the income received from the operation and management of the building over and above the immediate operating expenses and preferred expenditures, as set forth in the proposed plan (Art. III, sections 4 and 6 thereof) would go to the payment of interest on the proposed new issue of bonds and retirement of the principal thereof, no part of said sum to be turned over to the debtor corporation for corporate use, including dividends; that all the petitioning debtor desired was to have an opportunity during the course of time to pay off, retire, and reduce the fixed outstanding obligation against the said property, its sole and principal asset.

That pursuant to the said statement and of order of Court, such amendments to the proposed plan were, in writing, filed herein effective as of the date of the filing of the proposed plan of reorganization, and effective as of the date of the hearing hereon.

## XV.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein did not adequately protect or provide for the interests of the bond holders in that the proposed plan permitted the debtor to pay dividends out of the earnings of the said property even though it may not have paid any interest or principal payments in previous years; that such holding is against the evidence and the terms and provisions of the said plan as amended, for the attorneys for the petitioning debtor stated in open Court at the time of the hearing of the proposed plan that they were willing to and would amend the proposed plan (Art. III, Para. 6, sec. (g) thereof) in order that the said objection would be taken care of in its entirety, and would and were willing to provide that all income from the operation and management of the said building over and above operating expenses and preferred expenditures as set forth in said proposed plan (Art. III, Para. 4 and 6 thereof) would go to the payment of interest on the proposed new bond issue and the retirement of the principal thereof. No part of such funds to be turned over to the petitioning debtor to be used for corporate use including payment of dividends. That pursuant to the said statement and of order of Court, such amendments to the proposed plan were, in writing, filed herein, effective as of the date of



the filing of the proposed plan of reorganization, and effective as to the date of the hearing thereon.

## XVI.

That the Court, in making said order, in effect held that the proposed plan of reorganization of the debtor herein, did not adequately protect or provide for the interests of the bond holders and that the proposed plan required that net income, if any, equal to only 8% per annum of the principal amount of the outstanding bonds, should be devoted to the payment of principal and interest, the balance of net income to be distributed to the stockholders of the debtor corporation, even though the bond holders may not have received payments of principal or interest during previous years; that such holding is against the evidence and the terms and provisions of the said plan as amended, for the attorneys for the petitioning debtor stated in open Court at the time of the hearing on the proposed plan that they were willing to and would amend the said proposed plan (Art. III, Para. 6, sec. (g) in order that the said objection would be taken care of in its entirety and that all income from the operation and management of the building over and above operating expenses and preferred expenses as set forth in said proposed plan (Art. III, sections 4 and 6 thereof) would go to the payment of interest on the new bond issue and the retirement of the principal thereof: no part thereof to be turned over to the debtor corporation for corporate use including payment of dividends; further, that the proposed plan provided that a minimum interest rate of 2% per annum must be paid, otherwise default would be declared. That pursuant to the said statement and of

order of Court, such amendments to the proposed plan were, in writing, filed herein, effective as of the date of the filing of the proposed plan or reorganization, and effective as of the date of the hearing thereon.

#### XVII.

That the Court, in making said order, in effect held that the petitioning debtor herein was not a debtor within the meaning of the provisions of section 77B of the Bankruptcy Act and could not, by reason thereof, avail itself of said provisions, and furthermore, that the bond holders were not its creditors since the bonds were not issued or assumed by the debtor, notwithstanding that at the time of the hearing on the proposed plan, counsel for the said trustee and bond holders' committee conceded that under the terms and provisions of section 77B and the definitions therein set forth, that the petitioner was a debtor and that the bond holders were creditors within the meaning, terms and provisions of said section; that such holding is contrary to the law and to the meaning, terms, provisions and definitions set forth in said section 77B of the Bankruptcy Act, and the intent of Congress in enacting the same; that the petitioning debtor herein is a "debtor"; that the owners and holders of bonds are "creditors", and the obligation evidenced by the bonds is a "debt" within the meaning, terms, provisions and definitions of said section 77B of the Bankruptcy Act.

#### XVIII.

That the Court, in making said order, in effect held that the petitioning debtor could not carry out the proposed plan because a permit of the California Corporation

Commissioner would be required and that under the rules and regulations of the said Commission effective as of June 7, 1935, a permit could not be obtained to issue the new bonds; that such holding is against the evidence for, at the hearing thereon, the attorneys for the petitioning debtor stated and stipulated, and the attorney for the trustee and bond holders' committee conceded that said plan could undoubtedly be amended to comply with all of the rules and regulations of the California Corporation Commissioner and that such objection or objections did not and could not have any real or substantial merit, but could, and would, be taken care of by amendment, and the attorneys for the petitioning debtor then and there stated that they were willing to and would amend the proposed plan in all respects to comply with the rules and regulations of the California Corporation Commissioner, thereby overcoming the objections and exceptions set forth by the trustee, Leigh M. Battson, and of the Bond Holders' Committee under Paragraph IV thereof, subparagraphs 1, 2, 3 and 4.

#### XIX.

That the Court, in making said order, in effect held that section 77B of the Acts of Bankruptcy as amended is invalid and unconstitutional.

#### XX.

That the Court, in making said order, in effect held that if section 77B of the Acts of Bankruptcy as amended allowed, permitted or authorized the Court to in any wise or at all scale down the indebtedness of the bond holders, it was invalid and unconstitutional.

## XXI.

That the Court, in making said order, in effect held that the proposed plan of reorganization was inequitable; that such holding, among other reasons, is against the evidence, for the attorneys for the petitioning debtor stated in open Court at the time of the hearing on the proposed plan, that they were willing to and would amend, or make any other change in the said proposed plan, in any and every respect as required by the Court and which would, in the opinion of the Honorable Trial Court render said plan just and equitable with due respect and regard to the equities and rights of all parties concerned.

## XXII.

That the Court, in making said Order, in effect held that it was not satisfied that the proposed plan of reorganization was fair and equitable and did not discriminate unfairly in favor of any class of creditors or stockholders, and was feasible.

## XXIII.

That the Court, in making said Order, in effect held that the proposed plan of reorganization did not comply with the provisions of subdivision B of section 77B of the Acts of Bankruptcy as amended.

## XXIV.

That the Court, in making said Order, in effect held that the proposed plan of reorganization had not been accepted as required by the provisions of subdivision E, clause 1 of section 77B of the Acts of Bankruptcy as amended.

## XXV.

That the Court, in making said Order, in effect held that the proposed plan of reorganization did not comply with the provisions of subdivision E, clause 2 of section 77B of the Acts of Bankruptcy as amended.

## XXVI.

That the Court, in making said Order, in effect held that all of the amounts to be paid by the debtor or by any corporation or corporations acquiring the debtor's assets, and all amounts to be paid to committees or reorganization managers, whether or not by the debtor or any such corporation, for services or expenses incident to the reorganization, had not been fully disclosed and were not reasonable or to be subject to the approval by the Judge.

## XXVII.

That the Court, in making said Order, in effect held that the petitioning debtor issuing securities under the proposed plan was not authorized by its charter or by applicable State or Federal laws upon confirmation of the plan to take all action necessary to carry out the proposed plan and that the consent, authorization or approval of the corporation commissioner of the State of California would not or could not have been obtained under the proposed plan of reorganization.

## XXVIII.

That the Trial Court, in making said order, dismissed the restraining order restraining the trustee in possession from selling and disposing of the real and personal prop-

erty and assets of the debtor herein during the pendency of the proceedings on the petition for reorganization; that the Trial Court in making said order erred in that the said order should remain in full force and effect during the entire pendency of the proceedings for reorganization and until the final dismissal thereof.

### XIX.

That the Trial Court, in making said order, in effect held that Section 77B of the Acts of Bankruptcy as amended, and particularly subdivision B, clause 5 thereof, was invalid and unconstitutional in that the same was not a law on the subject of bankruptcy and did not deal with any subject over which power is delegated to Congress and is therefore in contravention of the Constitution of the United States, and particularly the 10th Amendment thereof.

Elbert E. Hensley

John H. Klenke

Attorneys for Francisco Building Corp., Ltd.

[Endorsed]: Received copy of the within document. Aug. 26, 1935. O'Melveny, Tuller & Myers, By M. A. T. Filed R. S. Zimmerman, Clerk, at 14 min. past 3 o'clock, Aug. 27, 1935 P M By Theodore Hocke, Deputy Clerk.

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS NINTH CIRCUIT

|                         |   |                       |
|-------------------------|---|-----------------------|
| In the Matter of        | ) | 7961                  |
|                         | ) | PETITION FOR          |
| FRANCISCO BUILDING      | ) | LEAVE TO APPEAL       |
| CORP., LTD., a corpora- | ) | (Under Sec. 24 B—Acts |
| tion,                   | ) | of Bankruptcy As      |
|                         | ) | Amended,              |
| Debtor.                 | ) | 11 U. S. C. A. 47)    |

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TO THE HONORABLE, THE PRESIDING JUSTICE, AND ASSOCIATE JUSTICES OF THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT:

The verified petition of the Francisco Building Corp. Ltd., a corporation, the debtor herein, respectfully shows as follows, to-wit:

I.

That on the 20th day of April, 1935 the petitioning debtor, Francisco Building Corp. Ltd. duly filed in the District Court of the United States, Southern District of California, Central Division, its petition for reorganization under and pursuant to the provisions of sections 77 A and B of the Acts of Bankruptcy as Amended; that the said petition was assigned docket #25552-J In Bankruptcy, and was entitled "In the Matter of Francisco Building Corp. Ltd., a corporation, Debtor"; that a true and correct copy of the aforesaid petition for reorganization is hereto attached and marked Exhibit "A" and

made a part hereof by reference as fully and completely as though herein set forth at length.

## II.

That at the said time the Honorable William P. James, Judge of the United States District Court, Southern District of California, Central Division, situated at Los Angeles, California, duly made his order approving the said petition and permitting and requiring the debtor herein to file its proposed plan of reorganization on or before the 20th day of May, 1935, and requiring service and publication thereof; that a true and correct copy of the said Order is hereto attached marked Exhibit "B" and made a part hereof as fully and completely as though herein set forth at length.

## III.

That thereafter, and on the 20th day of May, 1935, the said petitioning debtor, Francisco Building Corp. Ltd. did file in the aforesaid entitled proceedings its proposed plan of reorganization and the said Honorable William P. James, Judge of the United States District Court, Southern District of California, Central Division, did on said date make his order in writing setting the 1st day of July, 1935 as the day for the hearing on the proposed plan of reorganization, and requiring publication of the said order once a week for two consecutive weeks, and requiring service of a copy of the said proposed plan of reorganization and of the said order upon the trustee in possession, Leigh M. Battson, and upon the Bond Holders' Protective Committee consisting of H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys; that



a true and correct copy of the said proposed plan of reorganization filed as aforesaid is hereto attached marked Exhibit "C" and made a part hereof by reference as fully and completely as though herein set forth at length; that a true and correct copy of the aforesaid order of May 20th, 1935, is hereto attached marked Exhibit "D" and made a part hereof by reference as fully and completely as though herein set forth at length.

#### IV.

That thereafter, and pursuant to the terms and provisions of the aforesaid order of Court of May 20th, 1935, the aforesaid trustee and bond holders' protective committee were served with a copy of the proposed plan of reorganization and order and on or about June 25, 1935 duly served and filed herein their objections and exceptions to the proposed plan of reorganization, and served and filed herein a petition in support of their objections and exceptions to said proposed plan and for an order (1) rejecting said plan, (2) vacating and setting aside the order restraining sale heretofore made on the 20th day of April, 1935, and (3) dismissing the proceedings under 77 B; that the aforesaid objections and exceptions of the said trustee and bond holders' protective committee to the debtor's proposed plan of reorganization is hereto attached marked Exhibit "E" and made a part hereof by reference as fully and completely as though herein set forth at length; that the aforesaid petition in support of the said objections and exceptions to the debtor's proposed plan of reorganization is hereto attached marked Exhibit "F" and made a part hereof by reference as fully and completely as though herein set forth at length.

## V.

That thereafter and on the 1st day of July, 1935, at the hour of 2:00 o'clock P. M. thereof, the hearing on the proposed plan of reorganization and the objections and exceptions thereto duly and regularly came on for hearing and consideration before the said Honorable William P. James, in the Court Room of said Judge at Los Angeles, California, the petitioning debtor being represented by its counsel and attorneys, Messrs. Elbert E. Hensley and John H. Klenke, and the trustee and bond holders' committee being represented by their counsel Messrs. O'Melveny, Tuller and Myers, and Homer I. Mitchell, Esq. At the hearing and upon application of Elbert E. Hensley, Esq., and after receiving leave of Court so to do, the debtor herein duly served upon counsel for the said trustee and bond holders' committee, and filed herein, its amendment to petition for reorganization; that the said amendment to petition for reorganization is hereto attached marked Exhibit "G" and made a part hereof by reference as fully and completely as though herein set forth at length.

## VI.

The matter was thereupon presented to the Court on behalf of the petitioning debtor by John H. Klenke, Esq., who discussed and argued the matters set forth in the petition for reorganization and amendment thereto, analyzed and discussed the proposed plan and orally presented to the Court certain modifications and amendments of the proposed plan to meet and overcome certain specific technical objections and exceptions of the trustee and bond holders' committee, leave being then given to subsequently file such amendments, the same to be effective as

of the date of the filing of the proposed plan of reorganization and as of the date of the hearing thereof. That thereafter, and on the 29th day of July, 1935, the said Honorable William P. James duly made his order allowing and permitting the filing of amendments to the proposed plan of reorganization; that a true and correct copy of the said order is hereto attached marked Exhibit "H" and made a part hereof by reference as fully and completely as though herein set forth at length.

#### VII.

That thereafter *m* and on the 29th day of July, 1935, the petitioner herein duly filed its amendment to the proposed plan of reorganization, which said amendment was filed pursuant to and in compliance with the Order of July 29th, 1935, and copy of which amendments are hereto attached marked Exhibit "I" and made a part hereof by reference as fully and completely as though herein set forth at length.

#### VIII.

On behalf of the trustee and bond holders' committee, the objections and exceptions to the proposed plan for reorganization were presented to the Court by Homer I. Mitchell, Esq., who argued primarily the objections and exceptions set forth at Paragraphs I and III thereof, he conceding that the proposed amendments would in all probability overcome the technical objections and exceptions set forth in Paragraphs II and V thereof, and further conceding that under the definitions as set forth in Sec. 77B of the Acts of Bankruptcy as Amended the objections set forth in Paragraph V of said objections and exceptions would have no application. In reply Elbert E. Hensley,

Esq. on behalf of the petitioning debtor answered the objections and exceptions set forth and discussed by Homer I. Mitchell, Esq.

## IX.

The principal and main question so presented to the Court under the aforesaid objections and exceptions and the argument in connection therewith, was the constitutionality and validity of Sec. 77 B of the Acts of Bankruptcy as Amended and the power of the Court to act thereunder and the general power of a Court of Equity or Bankruptcy to approve a plan of reorganization presented pursuant to and in compliance with Sec. 77 B of the Acts of Bankruptcy as Amended.

## X.

After the conclusion of the argument, the matter was thereupon taken under submission by the Court. Thereafter, the said Honorable William P. James duly made the following memorandum of decision:

## “(MINUTE ORDER)

In the Matter of )  
 FRANCISCO BUILDING CORP. ) No. 25552-Bank.  
 LTD., A CORPORATION, )  
 Debtor. )

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The debtor herein having, after petition in that behalf duly filed, presented a plan of reorganization for the approval of the Court; and bondholders representing ownership of substantially all of the issued and outstanding bonds having objected to the approval or acceptance of

the proposed plan; and the Court having heard the matter of said petition and the objections so made thereto, now determines that the objections of the bondholders should be sustained and the proposed plan of the debtor not approved. IT IS SO ORDERED. The order restraining foreclosure proposed to be made on behalf of the bondholding interest is dissolved. The petition of the debtor will be dismissed by order hereafter entered unless the debtor has other property than that subject to the bondholders' lien which may be liquidated in this proceeding. An exception is noted in favor of the debtor petitioner."

#### XI.

That thereafter, and on the 29th day of July, 1935, the Honorable William P. James duly made his order in writing rejecting the debtor's proposed plan of reorganization and vacating and setting aside the restraining order; that a true and correct copy of the said order of July 29th, 1935, is hereto attached marked Exhibit "J" and made a part hereof by reference as fully and completely as though herein set forth at length.

#### XII.

That the Francisco Building Corp. Ltd., the petitioning debtor herein, considers itself aggrieved by the aforesaid order made by the Honorable William P. James in the proceedings herein on the 29th day of July, 1935, sustaining the objections and exceptions of Leigh M. Battson, trustee, and of the bond holders' committee to

the plan of reorganization proposed by your petitioner herein as the debtor, and disapproving and rejecting the said proposed plan of reorganization and vacating and setting aside a previous restraining order made by the Honorable William P. James under date of April 30th, 1935, restraining the sale by Leigh M. Battson as trustee of the real and personal property of your debtor specifically set forth and described in the petition for reorganization hereinbefore referred to as Exhibit "A", reference to which is hereby made; that the Francisco Building Corp. Ltd., the petitioning debtor herein, desires to appeal from such order or orders to this Honorable Court for the reasons specified in the assignment of errors which is filed simultaneously herewith, and prays that the said appeal may be allowed; that a citation be issued directed to Leigh M. Battson as trustee, H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys as the Medical Center Building First Mortgage Bond Holders Committee, commanding them, and each of them, to appear before this Honorable Court upon a time and place in said citation to be named and set forth, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records, papers, proceedings, arguments, offers and stipulations upon which the said order of July 29, 1935 is based may be sent and received by this Honorable Court; that a brief memorandum of points and authorities in support of its said appeal and assignment of errors is served and filed herewith.

## XIII.

It is respectfully submitted that this Honorable Court should hear this cause and allow this appeal for the following reasons, and each of them, to-wit:

(a) The Order of the Honorable William P. James, Judge of the United States *District Court of Appeals*, Southern District of California, Central Division thereof, made and entered on July 29th, 1935, is not in accord with and is contrary to the provisions of Sec. 77 A and 77B of the Acts of Bankruptcy as Amended;

(b) The aforesaid Order of the Honorable William P. James in effect holds that Sec. 77 B of the Acts of Bankruptcy as Amended is invalid and of no force and effect and that the same is in violation of the Constitution of the United States of America;

(c) Because important questions of law are involved herein and this Honorable Court should, we believe, in the public interest, pass upon them;

(d) That the aforesaid Order of the said Honorable William P. James does not consider, and ignores previous decisions of the United States Supreme Court and of the Circuit Court of Appeals of the various Circuits.

WHEREFORE, your petitioner prays that it may be allowed to appeal to the United States Circuit Court of Appeals of the Ninth Circuit from that certain Order made and entered on the 29th day of July, 1935 by the Honorable William P. James, Judge of the United States

District Court, Southern District of California Central Division sustaining the objections and exceptions of Leigh M. Battson, trustee, and of the Medical Center Building First Mortgage Bond Holders' Committee to the proposed plan of reorganization proposed by your petitioner herein as the debtor in those certain proceedings pending before the said Judge and Court in a matter therein entitled "In the Matter of Francisco Building Corp. Ltd., a corporation, Debtor", and having docket #25552-J In Bankruptcy, and from the whole of said Order and that a Citation be issued directed to the said Leigh M. Battson as trustee, and H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys as the Medical Center Building First Mortgage Bond Holders' Committee commanding them, and each of them, to appear before the said United States Circuit Court of Appeals, Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records, papers, proceedings and files in said proceeding upon which said Order is based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

FRANCISCO BUILDING CORP. LTD.

BY G. E. Arbogast

Asst. Secy.

Petitioner

Elbert E. Hensley

John H. Klenke

Attorneys for the said Petitioner



[Attached hereto and heretofore printed as a part of this record is Exhibit "A"—Petition for Reorganization Under Section 77 B of Bankruptcy Act; Exhibit "B"—Order; Exhibit "C"—Proposed Plan of Reorganization; Exhibit "D"—Order Fixing Time and Place of Hearing of Proposed Plan of Reorganization of the Francisco Building Corp., Ltd.; Exhibit "E"—Objections and Exceptions of Leigh M. Battson, as Trustee, and of Bondholders' Committee to Debtor's Proposed Plan of Reorganization; Exhibit "F"—Petition of Bondholders' Committee in Support of its Objections and Exceptions to Debtor's Proposed Plan of Reorganization and for an Order (1) Rejecting said Plan, (2) Vacating and Setting Aside the Order Restraining Sale, and (3) Dismissing Proceedings Under Section 77 B; Exhibit "G"—Amendment to Petition for Reorganization; Exhibit "H"—Order Permitting the Filing of Amendment to Proposed Plan of Reorganization; Exhibit "I"—Amendment to Proposed Plan of Reorganization; Exhibit "J"—Order Rejecting Debtor's Proposed Plan of Reorganization and Vacating and Setting Aside Restraining Order.]

State of California        )  
 County of Los Angeles ) ss

G. E. Arbogast, being by me first duly sworn, deposes and says: That he is the Asst. Sec'y of Francisco Building Corp., Ltd., the Petitioning Debtor herein, and has been authorized by said Francisco Building Corp. Ltd. to

execute this Instrument on its behalf; that he has read the foregoing PETITION FOR LEAVE TO APPEAL (Under Sec. 24B—Acts of Bankruptcy as Amended, 11 U. S. C. A. 47) and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or belief, and that as to those matters and things he believes to be true.

G. E. ARBOGAST

Assistant Secretary

Subscribed and sworn to before me this 24th day of August, 1935.

(SEAL)

H. J. HUTCHINGS

Notary Public in and for the County of Los Angeles,  
State of California.

(Endorsed) Petition for Appeal. Filed Aug. 26, 1935.  
Paul P O'Brien, Clerk

[Endorsed]: Filed R. S. Zimmerman, Clerk at 15 min.  
past 3 o'clock, Aug 27, 1935, P M, By Theodore Hocke,  
Deputy Clerk.

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS NINTH CIRCUIT

|                         |   |                   |
|-------------------------|---|-------------------|
| In the Matter of        | ) |                   |
|                         | ) |                   |
| FRANCISCO BUILDING      | ) | 7961              |
| CORP., LTD., a corpora- | ) |                   |
| tion,                   | ) | ASSIGNMENT OF     |
|                         | ) | ERRORS ON APPEAL. |
| Debtor.                 | ) |                   |

Now comes Francisco Building Corp. Ltd., a corporation, Debtor, and Appellant herein, and files this its Assignment of Errors, complaining that the Honorable William P. James, Trial Judge in the United States District Court, Southern District of California, Central Division, at Los Angeles, California, in sustaining the objections and exceptions of the trustee and bondholders' protective committee to the proposed plan of reorganization of the debtor, and in rejecting the same, erred as follows:

[See assignment of errors filed in the District Court heretofore printed in this transcript of record which are the same as set forth in the original filed in the United States Circuit Court of Appeals.]

(Endorsed) Filed Aug 26 1935 Paul P. O'Brien,  
Clerk.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 15 min.  
past 3 o'clock Aug 27 1935 P M By Theodore Hocke,  
Deputy Clerk.

At a stated Term, to wit, the October Term, A. D. 1934 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-sixth day of August in the year of our Lord One Thousand Nine Hundred and thirty-five.

Present:

Honorable FRANCIS A. GARRECHT, Circuit Judge,  
Presiding,

Honorable WILLIAM DENMAN, Circuit Judge,

Honorable CLIFTON MATHEWS, Circuit Judge.

)

IN THE MATTER OF THE PETITION OF )  
FRANCISCO BUILDING CORP. LTD., )  
a Corporation, ) No.7961  
FOR ALLOWANCE OF APPEAL UNDER )  
SECTION 24b OF THE BANKRUPTCY )  
ACT. )  
)

#### ORDER ALLOWING APPEAL

Upon consideration of the petition of Francisco Building Corp. Ltd., a corporation, for allowance of appeal, and of the assignment of errors thereon, filed simultaneously on the 26th day of August, 1935, and good cause therefor appearing,

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from

the order of the District Court of the United States for the Southern District of California, Central Division, made in this matter on the 29th day of July, 1935, be, and the same hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars (\$250.00) within ten days from date.

Received copy of the within Certified Copy of Order this 27th day of August, 1935.

O'Melveny, Tuller & Myers

By Milton A. Taylor

Attorneys for Leigh M. Battson as Trustee and H. H. Cotton, Charles C. Irwin, John Trainor and J. B. Van Nuys, *ad* the Medical Center Building First Mortgage Bond Holders Committee.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled matter.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 26th day of August, A. D. 1935.

[Seal]

Paul P. O'Brien

Clerk, U. S. Circuit Court of Appeals for the Ninth District.

[Endorsed]: Filed R. S. Zimmerman Clerk at 15 min past 3 o'clock Aug. 27, 1935 P. M. By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

No. 25552-J. In Bankruptcy  
PERSONAL BOND.

WHEREAS, the Debtor in the above entitled action is about to appeal to the United States Circuit Court of Appeals of the Ninth District from an order entered against it in said action in the said District Court of the United States, Southern District of California, Central Division, and in favor of the objecting parties and entered on the 29th day of July, 1935.

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, residents of the County of Los Angeles, State of California, do hereby jointly and severally undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded against it on the appeal or on dismissal thereof, not exceeding Two Hundred and Fifty Dollars (\$250.00), to which amount we acknowledge ourselves jointly and severally bound.

Sophia Haverty  
George Hess

State of California            )  
County of Los Angeles    ) ss.

Sophia Haverty and George Hess whose names are subscribed as sureties to the above bond, being duly sworn, as for himself says that he is a resident and householder within the State of California and County of Los Angeles;

that he is worth the amount for which he becomes surety over and above all his debts and liabilities in unencumbered property situated within this state exclusive of the property exempt from execution and for sale.

Sophia Haverty  
George Hess

Subscribed and sworn to before me this 30th day of August, 1935.

[Seal]

H. J. Hutchings

Notary Public in and for the County of Los Angeles,  
State of California

I hereby approve the foregoing bond.

Dated the 30th day of August 1935.

Paul J. McCormick,  
Judge.

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 50 min. past 4 o'clock, Aug. 30, 1935 P. M. By Theodore Hocke, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PRAECIPÆ

No. 25552-J

TO THE CLERK OF THE ABOVE ENTITLED  
COURT:

DEAR SIR:

Will you please have printed in the manner and form required by law as a transcript on appeal to the United States Circuit Court of *Appeal*, Ninth Circuit, the following records, papers and pleadings in the above captioned matter:

Petition for Reorganization under and pursuant to the provisions of section 77 a and b, filed in the above captioned matter.

The order of Court made on or about the 20th day of April, approving said petition.

The proposed plan for reorganization filed herein on or about May 20th, 1935.

The order of court dated May 20th, 1935.

The objections and exceptions to the proposed plan of reorganization filed herein June 25th, 1935, on behalf of the trustee, Leigh M. Battson and the Bondholders' Protective Committee.



The petition in support of the objections and exceptions of the said trustee and bondholders' committee, filed herein on or about June 25th, 1935. In connection with said petition, there is an exhibit entitled "Exhibit A", attached thereto. The only portion of said Exhibit "A" to be printed is "The Medical Center Building Reorganization plan", set forth as Exhibit 2-A of said Exhibit "A", designated pages 2, 3, 4 and 5 but which would ordinarily be pages 21, 22, 23, 24 and 25 of said Exhibit "A".

The order of court allowing amendment to the proposed plan of reorganization, dated July 29th, 1935.

The amendments to the proposed plan of reorganization filed herein July 29th, 1935.

The order of court made herein July 29th, 1935, rejecting the debtor's proposed plan of reorganization.

Assignments of errors on appeal filed herein on or about August 27th, 1935.

Petition for appeal and order allowing appeal duly made and filed herein on or about August 27th, 1935.

Citations on appeal;

Bond on appeal;

Petition for leave to appeal, captioned in the United States Circuit Court of Appeals, Ninth Circuit, duly filed herein on or about August 26th, 1935 and order of the United States Circuit Court of Appeals, Ninth Circuit, dated on or about August 26th, allowing appeal, copies of each of which were filed herein August 27th, 1935.

Statement of evidence and proceedings here in lodged August 7th, 1935 together with the annexed order of court settling and allowing the same.

Certificate of the Clerk to the effect that the assignment of errors on appeal captioned in the above entitled court and filed herein on or about August 27th, 1935 are the same as the assignment of the errors on appeal captioned in the United States Circuit Court of Appeals, Ninth Circuit, copy of which was filed herein on or about the 27th day of August, 1935.

Please charge the same to the above named debtor appellant, and advise the undersigned, attorneys for said debtor appellant, the cost thereof.

Very truly yours,

Elbert E Hensley

John H. Klenke

Attorney for Debtor Appellant

[Endorsed]: Received copy of the within Sep 17, 1935 O'Melveny, Tuller & Myers, By M. A. T. Filed Sep. 17, 1935 at 5 p. m. R. S. Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 132 pages, numbered from 1 to 132, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citations; petition for reorganization under section 77 B of the Bankruptcy Act; order of court approving said petition; proposed plan of reorganization; order fixing time and place of hearing of proposed plan; objections and exceptions to proposed plan; petition in support of the objections and exceptions; order permitting the filing of amendment to proposed plan; amendment to proposed plan of reorganization; statement of evidence; order rejecting debtor's proposed plan of reorganization, etc.; petition for appeal and order allowing appeal and assignment of errors in the United States District Court; petition for appeal; assignment of errors and order allowing appeal in the United States Circuit Court; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ \_\_\_\_\_ and that said amount has been paid the printer by the appellant

herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to ..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this ..... day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-five, and of our Independence the One Hundred and Sixtieth.

R. S. ZIMMERMAN,  
Clerk of the District Court of the  
United States of America, in  
and for the Southern District  
of California.

By

Deputy.